

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Misc Appli 149 of 2002

REPUBLIC.....APPLICANT

Versus

COMMISSIONER OF LANDS & 12 OTHERS.....RESPONDENTS

EX-PARTE MILKA MUTHONI RITHO

RULING

By the Notice of Motion dated 1st February 2006, the Applicant, who was the Interested Party in the main Motion dated 22nd February 2002 seeks orders that the court be pleased to enter judgment for costs in favour of the Interested Party herein with interest at court rates, until payment in full. He also asks for costs of this Application.

The ex parte Applicant, on 3rd June 2005 filed a notice to withdraw her Notice of Motion Application in Misc. Application 149/02. It was by a consent letter signed by Mr Rabala, litigation Counsel, appearing for the Attorney General and the ex parte Applicant's Counsel Mr. Kiiru. The Interested Party's Advocate was not party to the consent which stated that there would be no orders as to costs. Consequently the Interested Party filed the present Application seeking costs of the whole Notice of Motion Application.

So far, there has been no reply or objection raised to the Application dated 1st February 2006. Though the ex parte Applicant attempted to interpret the consent order otherwise, and tried to change their minds as to withdrawing of the main Notice of Motion, nothing has been filed in opposition to the present Application. It stands unchallenged. There is no doubt that it is the ex parte Applicant who dragged the Interested Party to court. The ex parte Applicant then without any explanation or reason decided to withdraw the Notice of Motion.

Under Order 53, Civil Procedure Rules, it is in the discretion of the court to make orders as to costs. Ordinarily, costs will follow the event. In this case, the ex parte Applicant having changed her mind and withdrawn her case, the Interested Party is deemed to have been the successful litigant and should be awarded the costs of the Notice of Motion in this case. This court hereby enters judgment on costs with interest at court rates, for the Interested Party/Applicant as prayed in the Notice of Motion dated 1st February 2006 together with costs of the Notice of Motion.

Dated and delivered this 11th day of May 2007.

R.P.V. WENDOH

JUDGE

Read in presence of

Mr. Kiiru for ex parte Applicant

Daniel: Court Clerk