REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
COMMERCIAL DIVISION – MILIMANI
CIVIL CASE NO.2170 OF 2000

HENRY NJOROGE :: PLAINTIFF
VERSUS
FINTECH INTERNATION LIMITED :::::::::::::::::::::::::::: 1ST DEFENDANT
FINTECH KENYA LIMITED :::::::::::::::::::::::::::::::::::: 2ND DEFENDANT

RULING

By his Plaint dated 16th November, 2000 and filed on 6th December, 2000, the Plaintiff prayed for:-

> ***(a) Judgment against the Defendants jointly and severally for US $18,000.00***
>
> ***(b) An order that the Defendants do deliver to the Plaintiff share certificates in respect of his 3% shareholding in the 1st Defendant.***
>
> ***(c) Costs.***

The Defendants denied the Plaintiff's claim. On 30th September, 2002 a statement of agreed issues was filed and one of the issues framed was as follows:-

> ***"5. Did the Plaintiff participate in any negotiations regarding the said Agreements with the Southern African Enterprises Development Fund Inc. that constituted a forbearance of his entitlement to 3% of the share capital in the First Defendant, a waiver of clause F(1) in the letter of offer and a concession of the entitlement contained in clause F(1) of the Letter of Offer?."***

On 24th February, 2005 a consent judgment was recorded by which inter alia the Plaintiff was allocated a 3% shareholding in the 1st Defendant. The parties however did not agree on who should bear the costs of the suit. This is the only issue for decision by me. On 16th March 2005, Counsels appearing agreed to file written submissions on this remaining issue. The submissions were accordingly filed. I have considered them. I have also considered the authorities relied upon by each Counsel. Having done so, I take the following view of the matter. It is clear that prayer (b) of the Plaintiff was consented to by the Defendants. The compromise reached was therefore partially in favour of the Plaintiff. The Defendants did not raise any counterclaim. Under Section 27 (1) of the Civil Procedure Act, costs are at the discretion of the Court. Ordinarily, however, they follow the event. In this case the Plaintiff has succeeded on one of his prayers. Costs should follow this event. In my view it is irrelevant that prayer (a) was not granted. This per se cannot deny the Plaintiff his costs on the successful prayer. The fact that the Defendants may have successfully resisted prayer (a) is not an event for which the Defendants are entitled to costs. There are no other circumstances in this case that would make me depart from the well-known principle. I accordingly hold that the costs of this suit are payable to the Plaintiff which costs will be taxed on the successful prayer.

DATED AND DELIVERED AT NAIROBI THIS 31ST DAY OF MAY 2005.

F. AZANGALALA

JUDGE