

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

CIV SUIT 128 OF 01

NABAYI MULTI-PURPOSE CO. PLAINTIFF

VS

AGRICULTURAL FINANANCE CO. LTD DEFENDANT

RULING

The plaintiff applicant moved this court pursuant to sections 3 and 3A of the Civil Procedure Act. The motion is supported by the affidavit of Risper Arunga sworn on 11th February 2004.

The only prayer sought is to have the orders issued on 12th June 2002 staying proceeding in this suit set aside and or discharged. The order would be set aside if it is shown that costs in Kitale H.C.C.C. No. 113 of 2001 have been paid. The order complained of is reproduced as follows:

“There be a stay of proceedings herein pending payment of the costs by the plaintiff in Kitale High Court Civil case No. 113 of 2001 Nabayi Multi -Purpose Co -operative Society Ltd VS A.F.C.”

It would appear costs was taxed at Ksh131,315/= as evidenced in the certificate of costs dated 27th May 2002.

The plaintiff submits that it has paid the taxed costs. Acknowledgment receipts were annexed to the supporting affidavit of Risper Arunga.

The Respondent opposed the motion on the ground that the applicant has not complied with the court order. It is stated that the applicant has paid a sum of 87,500 leaving a balance of Ksh.43,815/= unpaid. The defendant relied on the affidavit of D.M. Tunje sworn on 1st March 2004.

To me this appears to be a simple matter. It is not disputed that costs arising from KITALE H.C.C. No 113 of 2001 was taxed at Ksh.131,315/= which must be paid to enable this court discharge the court orders of 12th June 2002.

I have carefully scrutinized the acknowledgment receipts issued by both Gillete Traders Auctioneers and court Procter and the firm of M/s Kalya & Co. Advocates. It is evident that the total amount remitted to the defendant is a sum of Ksh.102,500/=. Obviously this falls short of the taxed costs of Ksh.131,315/=. I have already stated that the discharge of the order of 12th June 2002 is pegged on payment of costs. I find that the applicant has not fully complied with the aforesaid order. Consequently I have no jurisdiction to discharge the orders. The motion is ordered dismissed with costs to the Respondent.

DATED AND DELIVERED THIS 26th DAY OF March 2004

J.K. SERGON

JUDGE