

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
MISC. APP.1052 OF 2000

RICHARD GICHOBI KAMUNDOAPPLICANT

V E R S U S

THE DISTRICT MAGISTRATE I

- GICHUGU1ST RESPONDENT

GACHECHE WA MIANO ADV.2ND RESPONDENT

EDWIN MWAI KIRUAI3RD RESPONDENT

R U L I N G

On 27th September 2000 the applicant Richard Gichobi Kamundo brought Judicial Review application asking for orders of certiorari and prohibition to be directed against District Magistrate I Gichugu [B.G. Maina] to prohibit him from granting any further irregular orders on a Bill of costs presented before him. It was the case that the District Magistrate acted illegally by allowing one Gacheche Wa Miano to enter the suit and file a Bill of Costs.

While this was going on, it appears the District Magistrate I was retired and the Review application abated. Now Mr. Kopere has applied for costs because 1st, 2nd and 3rd respondents were joined in the suit. District Magistrate I Gichugu was retired. So 2nd and 3rd respondents should be paid costs.

Mr. Wambugu opposes awarding of costs to 2nd and 3rd respondents because office of District Magistrate I Gichugu ceased to exist by operation of law so the case did not abate.

I appreciate arguments of counsel in this matter, but like May L.J. said in LIPKIN GORMAN vs KARNALE LTD [1989] IWL 1390 said:-

“In making order for costs a court exercises a discretion, doing justice to all the circumstances of the case but bearing in mind the underlying principle that winner whoever may be described as winner is entitled to costs”.

Here who is the winner? perhaps there is none? but the case has terminated and it was a case where parties went to court. The winner here to me is that whose alleged misdeed is not proved and he is entitled to costs. The abolition of the office of District Magistrate I Gichugu operated only after a certain time so the costs must be payable to the point when the case terminated by virtue of abandonment of office.

I think the costs be paid up to the time but these would be instructions fees and attendance fees only.

Order accordingly.

Read to Mr. Mutande for applicant on 13/9/2002

A. I. HAYANGA

JUDGE

13/9/2002