



Revaba Infertility Clinic Pvt Ltd v Nephromed Limited (under administration) & 2 others (Miscellaneous Application E596 of 2024) [2025] KEHC 148 (KLR) (Commercial and Tax) (16 January 2025) (Ruling)

Neutral citation: [2025] KEHC 148 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E596 OF 2024
JWW MONG'ARE, J
JANUARY 16, 2025**

BETWEEN

REVABA INFERTILITY CLINIC PVT LTD APPLICANT

AND

NEPHROMED LIMITED(UNDER ADMINISTRATION 1ST RESPONDENT

KAMAL ANATROY BHATT 2ND RESPONDENT

DHIR KAMAL BHATT 3RD RESPONDENT

RULING

1. This court is being called to determine whether the Applicant herein is entitled to costs. The Applicant argues that it filed an application dated 27/10/2024 seeking leave to commence proceedings against the Defendants upon being advised that the Defendant company had been placed under Administration and therefore any party seeking to commence any proceedings against it required leave of the court.
2. The Applicant argues that the Defendant failed to timeously advise them that such leave was not necessary once the Administration had been lifted and therefore deployed a lot resources and effort to ensure that the matter proceeded. That it was only on 14/10/2024 after serving a mention notice for the hearing of their application that the Defendant advised them that the said administration had been lifted way back on 2/8/2024 and that the said application was therefore not necessary.
3. The Applicants argue that the Defendant deliberately misled them because they were intend on delaying the matter for commencement of the Arbitration proceedings against them and as a result they urge this court to award them costs. The Applicant argue that they appeared before the courts on



several times while the said appearances were unnecessary had the Defendants been candid with them and notified them that their administration had been lifted.

4. The Respondents oppose the application for costs. While agreeing that the application seeking leave to commence the proceedings was filed on 28/7/2024 while the 1st Respondent was under receivership, it was not until the 29/10/2024 that they became aware that the said administration had been lifted. The Respondent argues that there was no deliberate attempt to deceive the Applicant and that the said application was promptly compromised on 31/10/2024 and the arbitration process commenced promptly. They urge the court to order each party to bear its own costs or order minimal throwaway costs.

Analysis and Determination: -

5. Having heard the parties when they appeared before the court for oral submissions, I note that section 27 of the *Civil Procedure* places the burden of determining the issue of costs at the discretion of the courts. Section 27 provides as follows:-

“ 27

- (1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers: Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order. (2) The court or judge may give interest on costs at any rate not exceeding fourteen per cent per annum, and such interest shall be added to the costs and shall be recoverable as such”.

6. I have considered the arguments put forward by the parties. I note that the Respondents agree that indeed the Applicant is entitled to some form of compensation and urge this court to award throwaway costs if they must. I note that indeed no explanation was provided to the court as to why the 1st Respondent or its directors took so long to become aware that their position had changed and that the Administration had been lifted. Instead, they allowed the Applicant to continue to deploy its resource in canvassing an application that was unnecessary. I am satisfied therefore that the Applicant is deserving of costs for the efforts expended in the matter, albeit unnecessary. I find therefore that the Applicant is deserving of costs in this matter and I award costs to the Applicant. The said costs are assessed at Kshs. 100,000/= in favour of the Applicant and to be paid by the Respondents.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 16TH DAY OF JANUARY 2025

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J.W.W. MONG'ARE



JUDGE

In the Presence of:-

1. Ms. Gitonga holding brief for Mr. Kelvin Mogeni for the Applicant.
2. No appearance for the Respondents.
3. Amos - Court Assistant

