



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND ADMIRALTY DIVISION

CIVIL SUIT NO. 101 OF 2018

SOUTHCOTE LIMITED.....PLAINTIFF/APPLICANT

- VERSUS -

ANDREW SMITH.....1ST DEFENDANT

RAYMOND MATIBA.....2ND DEFENDANT

KENNETH STANLEY NJINDO MATIBA.....3RD DEFENDANT

STEPHEN G. SMITH.....4TH DEFENDANT

FARLO LIMITED.....5TH DEFENDANT

HAIES LIMITED.....6TH DEFENDANT

ALLIANCE NOMINEES LIMITED.....7TH DEFENDANT

ALLIANCE INVESTMENTS LTD.....8TH DEFENDANT

ALLIANCE DEVELOPMENTS LTD.....9TH DEFENDANT

ALLIANCE HOTELS LIMITED.....10TH DEFENDANT

MARLBOROUGH HOUSE KINDERGARTEN LTD.....11TH DEFENDANT

THE PEOPLE LIMITED.....12TH DEFENDANT

WESTLANDS (K) LIMITED.....13TH DEFENDANT

HILLCREST SCHOOL LIMITED.....14TH DEFENDANT

HILLCREST SECONDARY SCHOOL LTD.....15TH DEFENDANT

RITZENNA LIMITED.....16TH DEFENDANT

RULING

1. **Southcote Limited**, the plaintiff sued the 16th defendant by this action but by a notice of discontinuous, dated **21st September 2018** withdrew the case against all the defendants. The defendants filed a party/party bill of costs for costs awarded to them. The said bill of costs was taxed by the taxing master and by her Ruling of **3rd June 2019** the taxing master taxed those costs at Ksh 557,550.

2. The plaintiff filed a chamber summons application dated **14th August 2019** by which it sought, inter alia, enlargement of time for filing

Notice of objection to the taxation. On **26th September 2019** the defendants consented to the granting of that prayer for extension. The defendants having so consented the court ordered the plaintiff to file the notice of objection within 7 days.

3. The Ruling is over the plaintiffs other application by **Notice of Motion** dated **16th September 2019**. By that application the plaintiff seeks stay of execution of the **“Certificate of taxation or decree on costs pending the hearing and determination of the applicants (Plaintiff’s) Application dated 14th August 2019.”**

4. The application was opposed by the defendants who raised various grounds in opposition. Some of those grounds touch on the plaintiff’s lethargic process of serving the defendants with the applications it has recently filed, which the defendants described as lacking in urgency. The defendants also referred to the plaintiff’s delay in filing the application since the taxation of the bill of costs on **3rd June 2019**. It was also the defendants’ view that the plaintiff will not suffer prejudice if stay is not granted.

ANALYSIS

5. Immediately one critically looks at the prayer sought by the plaintiff one would realize that the prayer has by now been overtaken by events. This is because the plaintiff seeks to stay execution pending the hearing and determination of the application dated **14th August 2019**. That application of **14th August 2019** was determined on **26th September 2019**. On that ground alone the application is misconceived and unmerited.

6. Parties are bound by their pleadings and the plaintiff’s is bound by the prayer it presented before court. Since I do find that the application is unmerited the same will be dismissed with costs.

CONCLUSION

7. The **Notice of Motion** application dated **16th September 2019** is dismissed, for the reasons set above, with costs to the defendants.

DATED, SIGNED and DELIVERED at NAIROBI this 4th day of October, 2019.

M. KASANGO

JUDGE

Ruling read in open court in the presence of

SophieCourt clerk.

.....FOR THE PLAINTIFF

.....FOR THE DEFENDANT