



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KAKAMEGA**

**CIVIL SUITS NOS. 3 AND 4 OF 2017**

**JAMARAT APARTMENTS LIMITED.....PLAINTIFF**

**VERSUS**

**COUNTY GOVERNMENT OF VIHIGA.....DEFENDANT**

**RULING**

1. It would appear from the record before me that both matters were brought together, although not consolidated. That appears to me to be the case from the record of 18<sup>th</sup> April 2018 in Kakamega HCCC No. 4 of 2017.

2. I delivered a ruling herein on 3<sup>rd</sup> December 2018 disposing of the Motions dated 19<sup>th</sup> March 2018. I concluded, from the consent order recorded on 18<sup>th</sup> April 2018, that the said Motions had been disposed of by the terms of that consent. The defences that were attached to the affidavits in support of the applications were deemed to be duly on record and served, which effectively meant that the interlocutory judgement had been set aside.

3. The final order that I made in that ruling was in the following terms:

*“I shall accordingly set aside the judgement of 13<sup>th</sup> June 2017 and all consequential orders. The suit shall proceed to be determined on its merits. Costs shall be in the cause. Should any party be dissatisfied with the outcome of these proceedings, there is leave to appeal against the same at the Court of Appeal within twenty-eight (28) days.”*

4. As it is there is nothing to be determined following the order of 3<sup>rd</sup> December 2018, which I have set out above. It is all water under the bridge. Surely the advocates on record should have read the court file before proceeding to file submissions on the matter.

5. Clause 6 of the consent that the parties recorded on 18<sup>th</sup> April 2018, before Sitati J., sealed the fate of the two applications. It disposed of them finally and completely, leaving nothing else to be agitated, argued or determined. The clause says:

*“The applicant’s Statement of Defence dtd 19/03/2018 and filed herein on 06/04/2018 be and is hereby deemed as duly filed and served.”*

6. What was the purpose of having it deemed as duly filed and served if not to say that the judgement had been set aside and the said defence had been admitted and was to be deemed as being properly on record? That clause can only go together with a setting aside of the judgement, otherwise it would be useless, superfluous and irrelevant. I do not want to imagine that the parties intended to insert a clause in their consent which had no meaning or effect or purpose.

7. The parties are advised to fix the two matters for the hearing of the main suits, or, otherwise, file appeal against the ruling of 3<sup>rd</sup> December 2018 at the Court of Appeal.

**DELIVERED, DATED AND SIGNED AT KAKAMEGA THIS 11<sup>TH</sup> DAY OF DECEMBER, 2019.**

**W. MUSYOKA**

**JUDGE**