



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

JUDICIAL REVIEW NO. 57 OF 2011

IN THE MATTER OF: THE KADHI'S COURT ACT

AND

IN THE MATTER OF: MOMBASA KADHI'S COURT CIVIL

CASE NO. 103 OF 2011

UMIKULTHUM ABDULREHMAN

AND

MUHIDIN OMAR MOHAMED

AND

IN THE MATTER OF: AN APPLICATION FOR LEAVE TO

**FILE JUDICIAL REVIEW PROCEEDINGS FOR ORDERS OF CERTIORARI AND
PROHIBITION**

BETWEEN

1. REPUBLIC

2. THE KADHI MOMBASA.....RESPONDENTS

AND

MUHIDIN OMAR MOHAMED.....APPLICANT

VERSUS

UMIKULTHUM ABDULREHMAN.....INTERESTED PARTY

RULING

By this Notice of Motion dated 2nd November, 2012 the applicant seeks *inter alia* the following orders:

“2. That the costs of Kshs. 56,474/= awarded to the respondent in the Bill of Costs dated 29th November, 2011 be recovered from the rent the respondent is collecting from the house on Plot No. 24/49 Chaani Mombasa.

3. That the respondent to pay the costs of this application.”

The application was supported by the affidavit of the applicant **MUHIDDIN OMAR MOHAMED** dated 2nd November, 2012.

The present application arises from JR No. 57/2011 which was heard by the High Court and a ruling was delivered on 30th September, 2011. Costs were awarded to the Interested Party herein. Thereafter the Interested Party proceeded to have the Bill of Costs taxed. Following which the Interested Party commenced execution proceedings at which point the applicant filed the present application. **Hon. Tuiyott J.** heard the matter *ex-parte* and granted a temporary stay of execution. Both parties filed written submissions.

It was argued that in view of the fact that the respondent did not file either a replying affidavit or grounds of opposition the application ought to be considered as unopposed. Order 51 rule 14 of the Civil Procedure Rules provides:

“14. Any respondent who wishes to oppose any application may file any one or a combination of the following documents

- a. a notice of preliminary objection and/or
- b. replying affidavit and/or
- c. a statement of grounds of opposition

(2) The said documents in sub rule (1) and a list of authorities if any shall be filed and served on the applicant not less than three clear days before the date of hearing.

(3) Any applicant upon whom a replying affidavit or statement of grounds of opposition has been served under sub rule (1) may, with the leave of the court, file a supplementary affidavit.

(4) If a respondent fails to file to comply with sub rule (1) and (1) the application maybe heard ex-parte.”

The interested party was on 26th November, 2012 given leave to file and serve a replying affidavit within seven (7) days. To the extent that they failed to do so the facts upon which the application is grounded remain unopposed. However, I find that the respondent did file submissions indicating their desire to oppose the motion. As such and in exercise of the court’s discretion under section 3A of the Civil Procedure Act and order to reach a just determination I will consider the points of law raised in the respondent’s submissions.

The High Court did in exercise of its discretion award the applicant costs which were taxed at Kshs. 56,474.=. As such the Interested Party is entitled to the award of costs. I find no basis upon which the orders sought may be granted, more so in view of the fact that the amount of the monthly rent sought to be used to recover the costs is unknown – how many months rent will equal the sum of the costs awarded, this too is unclear. Courts ought not make vague and ambiguous orders. An order made by a court should be clear, precise and enforceable. As such I find no merit in this present application. The respondent ought to be allowed to enjoy the fruits of her award without delay. I therefore dismiss the present application and award the costs of the same to the respondent.

Dated and delivered in Mombasa this 3rd day of February, 2014.

M. ODERO

JUDGE