

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Civil Case 379 of 2004

VIC PRESTON LIMITEDPLAINTIFF

V E R S U S

KENYA SHELL LIMITEDDEFENDANT

R U L I N G

The Plaintiff herein was at all material times the tenant of the Defendant is some business premises in Nairobi. It is common ground that the dispute between them was, after filing of this suit, settled by a judgment delivered by the Business Premises Rent Tribunal. It is further common ground that summons to enter appearance and copy of the plaint were never served upon the Defendant, and for that reason the suit herein abated. The Defendant was served only with the application by chamber summons dated 16th April, 2004 by which the Plaintiff had sought a temporary injunction to restrain the Defendant from terminating the tenancy pending disposal of the reference then pending before the BPR Tribunal. The application was allowed with costs.

It appears that the parties agreed that the Defendant need not file defence unless required to do so by a 14 – day notice served upon it by the Plaintiff. No such notice was ever given. It would also appear that by the said arrangement the need to serve summons to enter appearance and copy of the plaint was rendered unnecessary. But, as already seen, it is common ground that the suit abated for want of service of summons and copy of the plaint.

The only outstanding issue is who will bear the costs of the suit. I do not quite understand why the Plaintiff insists, in the circumstances of this case, that it is entitled to costs. The dispute between the parties having been settled elsewhere, and the suit having abated in any case for want of service of summons and copy of the plaint, the only just order as to costs, is that the parties shall bear their own costs of the suit, except for the costs of the earlier application which were awarded to the Plaintiff. I so order.

DATED AT NAIROBI THIS 8TH DAY OF JULY, 2009

H. P. G. WAWERU

J U D G E

DELIVERED THIS 10TH DAY OF JULY, 2009