



Case Number:	Miscellaneous Application 10 of 2006
Date Delivered:	01 Dec 2010
Case Class:	Civil
Court:	High Court at Bungoma
Case Action:	Ruling
Judge:	Florence Nyaguthii Muchemi
Citation:	REPUBLIC & ANOTHER v PROTUS SIMIYU WASWA & ANOTHER [2010] eKLR
Advocates:	Mrs. Njalale for Makali for the applicant Mr. Karira for Kraido for the Respondent.
Case Summary:	-
Court Division:	Civil
History Magistrates:	-
County:	-
Docket Number:	-
History Docket Number:	-
Case Outcome:	-
History County:	-
Representation By Advocates:	-
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-

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REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT BUNGOMA
MISC. APPL. NO.10 OF 2006 (JR)

REPUBLIC APPLICANT

~VRS~

THE CHAIRMAN, WESTERN PROVINCE LAND
APPEALS COMMITTEE RESPONDENT

EX-PARTE

CHRISANTUS MAYENDE MANG'OLI APPLICANT

AND

PROTUS SIMIYU WASWA:..... INTERESTED PARTY

RULING

The exparte Applicant filed these judicial review proceedings against the interested party and the Respondents. The proceedings did not take off for the reason that the parties by consent recorded on the 7/12/2009 agreed to have the orders in the application granted. However, the parties failed to agree on the issue of costs. The counsels agreed to file submissions for the court to make a ruling.

Only the exparte Applicant counsel filed submissions in this matter. Mr. Makali referred the court to the provisions of section 27 of the Civil Procedure Rules. The section provides that ***“costs of and incidental to all suits shall be in the discretion of the court or judge, subject to any statutory limitations.”*** Further that ***“the costs shall follow the event”*** unless there is good reason to order otherwise.

It is the contention of the ex parte Applicant that he is the successful party and he ought to be paid costs. It was further argued that the interested party took the case to the tribunal which was the wrong forum and therefore ought to meet the expenses incurred by the ex parte Applicant in the whole litigation process.

It would have been an advantage to this court to have the submission of the interested party on this subject of costs. In the absence of the input of the interested party the court will have regard to the law and to the facts of this case.

The interested party filed the case before the tribunal. The ex parte Applicant appeared to defend his rights. The case ended in favour of the interested party. The award was confirmed as judgment of the court. The Applicant appealed against the award and the Western Province Appeals Board confirmed the tribunal's decision. The law is that costs follow the event and the successful party gets the costs. In these judicial review proceedings, the successful party is the ex parte Applicant because he got the order he sought for in these proceedings. It does not matter whether a consent was recorded or the matter was canvassed before the court to the very end. In all the forums attended by the parties, expenses were incurred by each party. The interested party is the one who kicked the ball in the wrong court and ought to bear the costs. It would be contrary to the provisions of section 27 of the Act to condemn the ex parte Applicant to pay costs for any of the forums. In this case, there is no issue that calls for the discretion of the court.

I therefore rule that the interested party meets the costs of these judicial review proceedings and for other forums regarding this matter.

F. N. MUCHEMI

JUDGE

Ruling delivered and dated at Bungoma on the 1st day of December, 2010 in the presence of Mrs. Njalale for Makali for the applicant and Mr. Karira for Kraido for the Respondent.

F. N. MUCHEMI

JUDGE



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