



**Mara Link Hotel Ltd v Pullet (Miscellaneous Civil Case E075 of 2023)
[2024] KEHC 16458 (KLR) (20 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 16458 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAROK
MISCELLANEOUS CIVIL CASE E075 OF 2023
F GIKONYO, J
DECEMBER 20, 2024**

BETWEEN

MARA LINK HOTEL LTD APPLICANT

AND

JASON LEMERIAN PULLET RESPONDENT

RULING

1. The respondent seeks costs following the withdrawal of this case by the applicant.
2. The respondent has argued that costs follow the event unless the court otherwise orders. He also stated that costs are to compensate the successful party and not to punish the losing party.
3. The respondent also made a fundamental submission that; a successful party is entitled to costs of the suit unless is guilty of misconduct or there exists a good reason not to award costs.
4. The respondent stated that he was treated to a barrage of litigation over the same cause of action-a conduct that aggravated his situation, making this case fit for payment of costs to him.
5. According to the respondent, the termination of the suit was prompted by their preliminary objection.
6. The respondent stated that the applicant did not commence arbitral proceedings as required.
7. On the basis of matters above, the defendant beseeched the court to order costs to be paid to him by the applicant.
8. They cited section 27 of the *Civil Procedure Act*, DGM vs. EWG [2021] eKLR, Republic, re Ex parte Rosemary Wairimu Muneo vs. Ihururu Dairy Cooperative Society JR 6 OF 2004, Cecilia Karuru Ngaya vs. Barclays Bank of Kenya [2016] eKLR, Reid Hewet & Co Ltd vs. Joseph Air [1918] CAL 717, Morgan Air Cargo Ltd vs. Everest Enterprises [2014] eKLR, UAP Insurance Ltd vs. Toiyoi Investment [2020] eKLR, .



9. The applicant urged that, the respondent disobeyed the interim order issued by this court leading to the filing of an application for contempt of court. But, even as the matter was mentioned severally, the respondent or his counsel were conveniently absent, yet, continuing with the offending acts constituting the contempt.
10. The applicant submitted that arbitral proceedings were commenced and arbitrator appointed but the respondent and his legal counsel failed to attend the meetings for setting the procedure of the arbitration.
11. In addition, the applicant stated that it was forced to defend a parallel suit in BPRT O150 OF 2023 at Nakuru which ordered the respondent to settle the rent arrears, participate in the arbitration and pay costs to the applicant. The said decision has not been appealed against or reviewed.
12. The applicant submitted further that, the purpose of the attendance ordered by the court for 9th July, 2024 was expressly stated; the court wanted to establish from the directors/shareholders of the company herein, how the company got itself in crossroads. But, the respondent did not attend this important court session despite all the directors/shareholders some who are living abroad attended.
13. The court directed filing of report on status of structural alterations by the respondent on the company premises.
14. The applicant, therefore, expressed disgust with the legal counsel for the respondent in feigning ignorance of the purpose of the said attendance.
15. The applicant was forceful that; the respondent is a trespasser, treacherous, fraud, bully; and his claim for costs is only aimed at manipulating the course of justice. The suit was filed to remedy grave injustice caused by the respondent.
16. As a consequence, the applicant accused the respondent of approaching equity with unclean hands; thus, undeserving of the discretion of the court on costs.
17. According to the applicant, under section 27 of the CPA, two principles are important. 'Costs follow the event' and 'costs are at the discretion of the court'. And, this being a withdrawn case in the circumstances detailed above, does not have a successful party.
18. On the basis of the test in Morgan Air Cargo case, the gruesome relationship between the parties, the desire to explore amicable settlement which was thwarted by the respondent and the reasons for and withdrawal of the suit which the respondent was duly aware, the applicant took the view that the respondent is not entitled to costs. They beseeched the court to deny the request for costs by the respondent.

Analysis And Determination

19. Amongst other relevant law on costs are; section 27 of the CPA, case law as well as eminent literal works, inter alia, by Mulla, Kuloba J(Retired), Odunga JA.
20. Two important principles arising therefrom. 'Costs follow the event'. And, 'costs are in the discretion of the court'. Which shape the grant of costs to a party in the suit.
21. The event, however, means the result of the entire litigation. Making, determination of 'the event', dependent upon the circumstances of the case which includes, but not limited to; the nature of the case, circumstances leading to the institution of the suit, events which led to the termination of the suit, the stage at which the proceedings were terminated, the need to promote amicable resolution of



- the dispute pursuant to article 159(2)(c) of *the Constitution*, and the conduct of the parties, as relevant considerations.
22. The court granted interim injunctive orders in this matter. But, constant complaints were made by the applicant that the respondent continued to disobey the court orders. As a consequence, an application to cite the respondent for contempt of court was filed.
 23. It also emerged that the respondent continued to deal with and paid rent in respect of the company property to an individual director of the company rather than the company.
 24. The court noted with concern the persistent and convenient absenteeism by the respondent, especially when he was required to appear before the court following concerns of possible disobedience of court orders.
 25. In the context of this case, the applicant has claimed that, in seeking costs, the respondent has not come to equity with clean hands; and that he is simply manipulating the course of justice.
 26. Maxims of equity are peculiarly wrapped in metaphor. But, they acknowledge transcendent wisdom; are sound, determinate and authoritative when properly invoked.
 27. The quality of good faith- bona fides- is a legal principle although stemming from equity. A party who does not exhibit bona fides in approaching the court, taints his stature before the court which goes to the general conduct of the party.
 28. The actions by the respondent during the course of proceedings, did not exhibit bona fides required of a party.
 29. Parties were also engaged in out of court settlement, but in vain. The applicant stated that an arbitrator was appointed but the respondent thwarted all effort thereto. The respondent accuses the applicant of not commencing the arbitration. But, the counter accusations notwithstanding, the claim by the applicant that, one of the orders in Nakuru BPRT 0150 OF 2023 was that the respondent participates in the arbitration, was not controverted by the respondent.
 30. The overall impression arising out of these facts is that the respondent has not acted in good faith in dealing with the matters of litigation. This finding is only for the purpose of the request for costs.
 31. Acknowledging these facts, shapes the exercise of discretion by the court on the request for costs.
 32. In these circumstances, it is unfair to award the respondent costs of these proceedings. The fairest order is for each party to bear own costs of the proceedings.
 33. Orders accordingly.

DELIVERED THROUGH TRANSMISSION TO THE EMAILS PROVIDED BY THE LEGAL COUNSEL FOR THE RESPECTIVE PARTIES AS AGREED THIS 20TH DAY OF DECEMBER, 2024

**HON. F. GIKONYO M
JUDGE**

In the presence of:
Ms. Mong'are:
Mwaniki Gitau:



Otolo C/A

