



**Akaran v Chief Magistrate’S Court, Mombasa; Mbele & 2 others (Interested Parties)
(Judicial Review E026 of 2022) [2023] KEHC 418 (KLR) (30 January 2023) (Ruling)**

Neutral citation: [2023] KEHC 418 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
JUDICIAL REVIEW E026 OF 2022
OA SEWE, J
JANUARY 30, 2023**

BETWEEN

ETORE JOHN AKARAN APPLICANT

AND

CHIEF MAGISTRATE’S COURT, MOMBASA RESPONDENT

AND

PATRICK MWAMVULA MBELE INTERESTED PARTY

INDEPENDENT ELECTORAL AND BOUNDARIES

COMMISSION INTERESTED PARTY

IBRAHIM WARIO INTERESTED PARTY

RULING

- (1) The applicant, Etoe John Akaran, filed his Chamber Summons dated November 14, 2022 under a Certificate of Urgency seeking leave to commence judicial review proceedings for orders of *Certiorari* and *Mandamus* in connection with Chief Magistrate’s Election Petition No. E002 of 2022: Etoe John Akaran v Patric Mwafula Mbelle & others. The applicant’s complaint was that the respondent had declined his request for copies of the proceedings and ruling delivered on October 18, 2022 and November 4, 2022.
- (2) Upon leave being granted on November 14, 2022, the applicant filed his substantive application on November 16, 2022. The substantive application was ultimately overtaken by events, after the applicant was supplied with copies of the proceedings and ruling. Mr. Yose for the applicant nevertheless asked for costs on behalf of the applicant, contending that he had lost the Petition in any event.



(3) Mr. Mutugi, learned counsel for the interested parties opposed the application. In his view, the application was unnecessary; and therefore, if anything it is the applicant who should pay costs. He submitted that it was not true that the applicant lost the Petition because of lack of the proceedings. Thus, counsel urged that the prayer for an award of costs be disallowed.

4. Needless to say that it is in the discretion of the court to make an award as to costs, depending on the circumstances of each case, for section 27 provides:

“(1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers: Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.”

5. Thus, in *Reid, Hewitt & Co v Joseph*, AIR 1918 Cal 717 and *Myres v Defries* (1880) 5 Ex D 180 the house of Lords noted that: -

“The expression ‘costs shall follow the event’ means that the party, who, on the whole, succeeds in the action gets the general costs of the action, but where the action involves separate issues, whether arising under different causes of action or under one cause of action, the word ‘event’ should be read distributive and the costs of any particular issue should go to the party who succeeds upon it.”

6. Similarly, in *Halsbury’s Laws of England*, 4th Edition (Re-issue), [2010], Vol.10. para 16, the opinion is proffered that:

“The court has discretion as to whether costs are payable by one party to another, the amount of those costs, and when they are to be paid. Where costs are in the discretion of the court, a party has no right to costs unless and until the court awards them to him, and the court has an absolute and unfettered discretion to award or not to award them. This discretion must be exercised judicially; it must not be exercised arbitrarily but in accordance with reason and justice” (Emphasis added).

7. Ordinarily therefore, costs in this matter would go to the respondent and the interested parties, the event herein being the withdrawal of the entire Judicial Review Application by the applicant upon being supplied with copies of the ruling in issue. It matters not, in my view that the applicant ultimately lost the petition before the Chief Magistrate’s Court. Nevertheless, having taken into account the circumstances of the case, including the fact that the applicant opted to have this matter withdrawn at the earliest opportunity, it is my considered view that the judicious thing to do in the circumstances is to order that each party bears own costs.

8 It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MOMBASA THIS 30TH DAY OF JANUARY 2023

OLGA SEWE



JUDGE

