



**Teklehaimanot v Director of Public Prosecutions & 4 others
(Constitutional Petition E060 of 2021) [2023] KEHC 492 (KLR)
(Constitutional and Human Rights) (30 January 2023) (Ruling)**

Neutral citation: [2023] KEHC 492 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND HUMAN RIGHTS
CONSTITUTIONAL PETITION E060 OF 2021**

**M THANDE, J
JANUARY 30, 2023**

BETWEEN

GHEREZGHIHER ABRAHAM TEKLEHAIMANOT PETITIONER

AND

DIRECTOR OF PUBLIC PROSECUTIONS 1ST RESPONDENT

NATIONAL POLICE SERVICE 2ND RESPONDENT

OCS SPRING VALLEY POLICE STATION 3RD RESPONDENT

ATTORNEY GENERAL 4TH RESPONDENT

MICHAEL YOHANNES KIDANE 5TH RESPONDENT

RULING

1. The background of this case as can be gleaned from the Petition dated 7.6.21, is that Zodiac Engineers (K) Limited of which the petitioner is a director, borrowed the sum of Kshs. 9,965,650/= from Asmara Entertainment Company Limited, of which the 5th respondent is a director. Following the petitioner's rejection of a request by the 5th respondent to have the loan converted into equity, the 5th respondent sent a letter through his lawyers demanding refund of the loan amount and interest within 14 days. The petitioner proposed to repay the outstanding amount in 6 months. The 5th respondent however made a complaint at the Spring Valley Police Station and the petitioner was summoned on 16.2.21. He deposited his passport and was released on a police bond and thereafter charged in Milimani Criminal Case No. 162 of 2021 with the offence of obtaining by false pretenses. The petitioner then filed the Petition dated 18.2.21 seeking a raft of orders and declarations, including a declaration that the dispute



between him and the 5th respondent was commercial in nature and ought not be subject to criminal proceedings.

2. The Parties commenced negotiations and entered into a consent dated 1.10.21. The consent was adopted as an order of the court on 17.12.21 and the Petition was duly marked as settled. However, the 5th respondent demanded costs. The parties could not agree on the issue of costs and the court directed them to file submissions thereon. The issue of costs is thus the subject of this ruling.
3. It is trite law that costs follow the event and are at the discretion of the court. This is the general principle particularly in civil litigation. (See *Jasbir Singh Rai & 3 others v Tarlochan Singh Rai & 4 others* [2014] eKLR and *Mohammed Mahamud Ali v Independent Electoral and Boundaries Commission* [2019] eKLR).
4. In constitutional petitions, the award of costs is provided for under Rule 26 of the *Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules*, 2013 as follows:
 1. The award of costs is at the discretion of the court.
 2. In exercising its discretion to award costs, the court shall take appropriate measures to ensure that every person has access to the court to determine their rights and fundamental freedoms.
5. The award of costs is discretionary. Rule 26(2) enjoins the court that as it exercises its discretion with regard to costs, to ensure that every person has access to the court to determine their rights and fundamental freedoms. Differently put, the court must be mindful that an award of costs will not deter parties or hinder access to the Court for enforcement of rights or of the Constitution. See *Feisal Hassan & 2 others v Public Service Board of Marsabit County & another* [2016] eKLR.
6. The court has considered that the petitioner herein sought to enforce his constitutional rights and fundamental freedoms. The court has also considered that no response was filed. Additionally, there has not been a determination of the Petition on merit as the same was settled by consent of the parties. In the premises and in line with the principle that costs must not hinder access to court for determination of rights and fundamental freedoms under article 22 and enforcement of the *Constitution* under article 258 of the *Constitution*, I find that the circumstances herein do not call for an award of costs.
7. Accordingly, for the reason set out above, the court makes an order that each party shall bear own costs.

DATED AND DELIVERED IN NAIROBI THIS 30TH DAY OF JANUARY 2023

M. THANDE

JUDGE

In the presence of:

..... for the Petitioner
..... for the 1st – 4th Respondents
..... for the 5th Respondent
..... Court Assistant

