



Apollo Holdings Ltd v Westfield Shopping Mall Ltd (Environment and Land Appeal E075 of 2020) [2023] KEELC 17054 (KLR) (20 April 2023) (Ruling)

Neutral citation: [2023] KEELC 17054 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND APPEAL E075 OF 2020**

**LN MBUGUA, J
APRIL 20, 2023**

BETWEEN

APOLLO HOLDINGS LTD APPELLANT

AND

WESTFIELD SHOPPING MALL LTD RESPONDENT

(Being an appeal against the ruling of the Chief Magistrate's Commercial Court in CM E&L NO. E070 OF 2021 delivered on 18/8/2021 by Hon. Lewa (PM))

RULING

1. This appeal was filed through a memorandum of appeal dated 18.9.2021, but a notice of withdrawal of the suit was filed on 8.3.2023. In the circumstances, the suit was marked as withdrawn on 13.4.2023. The parties however could not agree on the issue of costs, hence this ruling.
2. It was argued for the appellant that the dispute is now before an arbitration platform. To this end, they did not serve the memorandum of appeal since there was no intention of making the respondent to incur costs, and that the respondents must have come across the case in the court's digital platform (CTS). The purpose of lodging the appeal was to secure the rights of the appellant.
3. The respondent on the other hand is asking for costs, contending that the ruling appealed against was in favour of appellants and that the respondent had duly filed an application dated 10.11.2022 to strike out the suit.
4. Matters of costs are governed by the provisions of Section 27 of the [Civil Procedure Act](#) where it is stipulated that "costs of and incidental to all suits shall be in discretion of the court..."



5. In the Supreme Court of Kenya case of *Baridi Felix Mbevo vs. Musee Mati & 2 others* [2021] eKLR, the court stated thus;

“It is trite that we have an inherent jurisdiction to make orders on costs. In the Jasbir Singh Rai case at paragraph 11, this court established that costs fall under the inherent powers of the court”

6. I have taken into account that the memorandum of appeal was not served, thus the respondent had not received the invitation to defend the suit. Further, the substantive dispute is apparently on going before the arbitration platform. In the circumstances, the case is withdrawn with no orders as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 20TH DAY OF APRIL, 2023 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Sheuda holding brief for Osudwa for Respondent

Ochieng for Appellant

Court assistant: Joan

