



REPUBLIC OF KENYA



**Equipment Masters EA Limited v TKM Maestro Ltd (Civil Appeal 385 of 2018)  
[2023] KEHC 21467 (KLR) (Appeals) (15 August 2023) (Judgment)**

Neutral citation: [2023] KEHC 21467 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
APPEALS  
CIVIL APPEAL 385 OF 2018  
AN ONGERI, J  
AUGUST 15, 2023**

**BETWEEN**

**EQUIPMENT MASTERS EA LIMITED ..... APPELLANT**

**AND**

**TKM MAESTRO LTD ..... RESPONDENT**

*(Being an appeal from the judgment and decree of Hon. M. Obura  
(SPM) in Milimani CMCC no. 461 of 2011 delivered on 30/7/2017)*

**JUDGMENT**

1. The Appellant filed CMCC 461 of 2011 against the Respondent seeking to recover Kshs.1,206,249.60 on account of services rendered and not paid for by the Respondent from the year 2005.
2. The Appellant admitted they had paid Ksh.900,000 leaving a balance of Ksh.306,249.60.
3. The trial court found that the Appellant was entitled to amount claimed of Kshs.306,463.84 less Ksh.48,394.21 =Ksh.254,069.59.
4. The Appellant has appealed against the Judgment on the following grounds;
  - i. The Learned Trial Magistrate erred in law and made a fundamental mistake in failing to award costs to the plaintiff.
  - ii. The Learned Trial Magistrate erred in law and fact by giving an order for each party to bear their own costs.



5. The parties filed written submissions as follows;

The Appellant submitted that the Trial Magistrate failed to take into account the facts that triggered the litigation and the fact that the Respondent's breach of contract formed the cause that led to the filing of the suit.
6. Further that the respondent is responsible for paying costs of the suit and interest from the date of filing suit.
7. The Appellant relied on the case of *Orix (K) Ltd vs Paul Kaven & 2 Others* (2014) eKLR where the court held that the costs follow the event.
8. The appellant also relied on the case of *Cecilia Karuru Ngayu vs Barclays Bank Of Kenya Ltd & Another* (2016) eKLR where it was held that the court must take into account the circumstances which led to the institution of the suit in awarding costs.
9. The Appellant also relied on the case of *Republic vs Rosemary Wairimu Munene, Exparte Applicant vs Thururu Dairy Farmers Ltd* – Judicial Review Application No. 6 of 2014 where it was held that the issue of costs is a discretion of the court but the same should not be used to penalize the losing party but rather to compensate the successful party for the trouble taken to prosecute the case.
10. The respondent on their part relied on Section 27(1) of the *Civil Procedure Act* on the issue of the applicable law on costs.
11. The respondent relied on the case of *David Kiptum Korir vs Kenya Commercial Bank & Another* (2021) eKLR where the court said that the award of costs is not cast in stone but courts have the ultimate discretion and that in exercising the discretion, the courts must not only look at the outcome of the suit but also the circumstances of the case.
12. Further, the respondent relied on the case of *Morgan Air Cargo Limited vs Everest Enterprises Limited* where the court said that the following factors have to be taken into consideration
  - i. The conduct of the parties
  - ii. The subject of litigation,
  - iii. The circumstances which led to the institution of the proceedings,
  - iv. The events which eventually led to their termination,
  - v. The state at which the proceedings were terminated,
  - vi. The manner in which they were terminated,
  - vii. The relationship between the parties, and
  - viii. The need to promote reconciliation amongst the disputing parties pursuant to Article 159(2) (c) of the *Constitution*
13. This being a first appeal, the duty of the first appellate court is to re-evaluate the evidence adduced before the trial court.
14. The sole issue for determination in this is whether the appellant was entitled to the costs of the suit.
15. On the issue as to whether the respondent is responsible for paying costs of the suit and interest from the date of filing suit, I find that it is trite law that costs follow the event.



16. I agree with the Appellant's submissions that the that the issue of costs is a discretion of the court but the same should not be used to penalize the losing party but rather to compensate the successful party for the trouble taken to prosecute the case.

17. I allow the appeal and grant the Appellants costs and interest at court rate on the amount awarded from the date of filling the original suit until payment in full.

**DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS  
15<sup>TH</sup> DAY OF AUGUST, 2023.**

.....

**A. N. ONGERI**

**JUDGE**

