



REPUBLIC OF KENYA



**KENYA LAW**  
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**Rift Valley Agricultural Contractors Ltd & another v National Bank of Kenya Ltd & another (Civil Case 21 of 2009) [2022] KEHC 10440 (KLR) (23 June 2022) (Ruling)**

Neutral citation: [2022] KEHC 10440 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
CIVIL CASE 21 OF 2009  
HK CHEMITEI, J  
JUNE 23, 2022**

**BETWEEN**

**RIFT VALLEY AGRICULTURAL CONTRACTORS LTD ..... 1<sup>ST</sup> PLAINTIFF**

**MAVIPA FARMERS LIMITED ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**NATIONAL BANK OF KENYA LTD ..... 1<sup>ST</sup> DEFENDANT**

**AGRICULTURAL FINANCE CORPORATION ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. On 1<sup>st</sup> September 2021 this suit was compromised by a consent between the plaintiffs and the 2<sup>nd</sup> defendant. What remained therefore was the issue of costs between the 1<sup>st</sup> defendant and the plaintiff. The 1<sup>st</sup> defendant was not part of the consent although it had been sued by the plaintiffs and fully participated in defending itself.
2. The court directed the plaintiffs and the second defendant to agree on costs or have it be determined by the court. In other words, whether the 1<sup>st</sup> defendant was entitled to costs which was to be paid for by the plaintiffs. There was no compromise and thus the court directed them to submit over it which they have complied.
3. The 1<sup>st</sup> defendant, hereinafter referred to as the, bank, submitted that it was entitled to be compensated by way of costs as it had been dragged into court by the plaintiffs unnecessarily. This was exemplified by the compromise between it and the 2<sup>nd</sup> defendant. That it has been in the matter for the last 13 years and filed numerous papers in defence of itself.
4. It went on to state that the amount of money involved in the matter was about kshs.60 million and it was thus necessary to shield itself from the suit. In the end and through the consent between the plaintiffs and the 2<sup>nd</sup> defendant it was clearly found that the bank was innocent.



5. Section 25 and 27 of the *Civil Procedure Act* stipulates according to it that costs follow the event. Having been in the corridors of justice for over a decade and having been found innocent, the natural consequent is for it to be awarded costs.
6. The bank relied on several authorities' notable one was *Cecilia Karuru Ngayu v. Barclays bank of Kenya* (2016) eKLR.
7. The plaintiffs vehemently opposed the same vide their submissions dated 22<sup>nd</sup> February 2022. They argued that in the first instance there was no evidence that the banks board held a resolution to defend the suit which was contrary to the provisions of Order 9 rule 2 of the *Civil Procedure Rules*.
8. The plaintiffs went ahead to rely on plethora of authorities to demonstrate that before filing or defending a suit a corporation must pass a resolution and in the absence of the same whatever is filed shall be a non-starter. In this case the appointment of the law firm on record, the filing of any pleadings and defending the suit was of no consequence hence it should not be entitled to any costs.

### **Analysis and determination.**

9. The court has perused the proceedings herein and specifically the primary documents filed. The court has as well perused the court attendances by the parties and it is evident that this matter has been very acrimonious and bitter one.
10. After very many false starts the matter began on 30<sup>th</sup> August 2021 and before the plaintiff witness finalised his testimony the court directed that they attempt a compromise. Indeed, the following day a consent was hammered living only the question of costs due to the bank to be determined between it and the plaintiff. There was no compromise hence the directive that they submit over it.
11. It is true that the costs follow the events as provided by Section 27 of the *Civil Procedure Act*. The same states that;

“(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.”

12. The bank was sued by the plaintiff together with the 2<sup>nd</sup> defendant. The bank was not brought on board by any other entity but the plaintiff. By the time the plaintiff decided to sue the bank it had already determined that there was a cause against it.
13. In this regard therefore the plaintiffs must carry the consequence of their decision. This was an event which section 27 above anticipated. The bank filed its defence and other pleadings including defending multiplicity of applications. It hired its counsel on record. It prepared for the same in the usual manner and participated in the hearing exercise though midway as stated above the court directed the parties to compromise.
14. As a matter of fact, had the plaintiff been keen, it ought to have discharged the bank way back.



15. The argument that the bank ought to have obtained resolutions before defending the suit is superfluous to say the least. It is not the bank that filed the suit but it was sued. Even for argument sake, at what point would the bank been required to seek authority from the directors and or shareholders noting that it is a public entity.? It would have been different as the authorities cited by the plaintiff's state if it was the bank that instituted the suit.
16. Consequently, and in exercising the discretion of this court I hold that the plaintiffs to the extent that it sued the 1<sup>st</sup> defendant without any cause as exemplified by the consent ought to carry the burden of costs. They cannot hide under some legal arguments as per their submissions.
17. The supreme court in *Jasbir Singh Rai & 3 others v. Tarlochan Singh Rai & 4 others* (2014) eKLR stated inter alia that;  

“So the basic rule on arbitration of cost is; costs follow the event. But it is well recognized that this principle is not to be used to penalize the losing party; rather it is for compensating the successful party for the trouble taken in prosecuting or defending the suit”.
18. The costs of this suit are therefore granted to the 1<sup>st</sup> defendant to be met by the plaintiffs jointly and severally.

**DATED SIGNED AND DELIVERED AT NAKURU VIA VIDEO LINK THIS 23<sup>RD</sup> DAY OF JUNE 2022.**

**H K CHEMITEL.**

**JUDGE**

