



**Hydromasters Drilling Company Limited v Ngong Butchers Co-operative Society Limited (Environment & Land Case E034 of 2021)
[2023] KEELC 21616 (KLR) (16 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21616 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE E034 OF 2021
MN GICHERU, J
NOVEMBER 16, 2023**

BETWEEN

HYDROMASTERS DRILLING COMPANY LIMITED PLAINTIFF

AND

NGONG BUTCHERS CO-OPERATIVE SOCIETY LIMITED RESPONDENT

RULING

1. On 14/3/2023, the Plaintiff's counsel withdrew the suit in its entirety. When the Defendant's counsel asked for costs, the Plaintiff's counsel urged that costs should not be awarded because none were awarded in the arbitration proceedings.
2. Counsel for the parties were directed to file written submissions on why costs should or should not be awarded.

The plaintiff's counsel complied with the directions but the defendant's counsel did not because he was given 30 days from 16th May 2023. As I write this ruling in late October 2023, no such submissions have been received from the defendant's counsel.

3. In his written submissions dated 2/5/2023, the plaintiff's counsel has raised the following issues.
 - i. The legal framework as to costs.
 - ii. Relevance of the legal framework to this case.
 - iii. Conclusive determination of the dispute in another forum.
4. I have carefully considered the submissions by learned counsel for the plaintiff including the case law cited therein. I find that the law on costs is that they must follow the event. In this case, the defendant is



the successful party because the plaintiff has withdrawn the suit. My understanding is that the plaintiff must meet the defendant's costs unless it can give sufficient reasons why it should not meet such costs.

5. The proviso to **Section 27 of the Civil Procedure Act** is my authority for saying this. It provides as follows.

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 reasons otherwise order.

6. To me, the law is as enunciated in the *proviso*. There is a mandatory "***shall follow the event***". The only exception to this rule is that good reasons be provided why the court should deviate from this general and mandatory rule. In this case, it is the plaintiff to convince the court that the defendant whom it brought to court should not be paid the costs of the suit.
7. The fact that no costs may have been awarded in the arbitration proceedings is not sufficient reason. This court is not bound by the proceedings in the arbitration forum.
8. The res judicata rule does not apply in this case. It would have probably applied if the plaintiff proved that the defendant was fully compensated with an award of costs by the tribunal. This is not what the plaintiff is saying. What the plaintiff is actually saying is that the defendant was not paid any costs. It is not fair to order that a party which defended a suit that was eventually withdrawn by the party that filed it should get no costs. This is neither fair nor just. Costs must follow the event and in this case, they must be paid to the defendant.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 16TH DAY OF NOVEMBER, 2023.

M.N. GICHERU

JUDGE

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