



REPUBLIC OF KENYA



KENYA LAW
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**Waigwa v Kiguru; Jubilee Party & 4 others (Interested Parties) (Miscellaneous
Petition 1 of 2021) [2025] KEHC 583 (KLR) (20 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 583 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NANYUKI
MISCELLANEOUS PETITION 1 OF 2021
AK NDUNG’U, J
JANUARY 20, 2025**

BETWEEN

HON PETER THIOMI WAIGWA PETITIONER

AND

HON JOSEPH MAINA KIGURU RESPONDENT

AND

JUBILEE PARTY INTERESTED PARTY

HON RAPHAEL TUJU INTERESTED PARTY

COUNTY ASSEMBLY OF LAIKIPIA INTERESTED PARTY

HON SPEAKER, COUNTY ASSEMBLY OF LAIKIPIA INTERESTED PARTY

HON JOHN MUTAHI MURITU INTERESTED PARTY

RULING

1. This ruling resolves an oral application for costs that was made by the Respondent’s counsel. As per the record, the Petitioner failed to appear in court on several occasions and a notice to show cause why the petition should not be dismissed was issued to the Petitioner. He appeared in person on 31/10/2023 and he informed the court that he wished to have the matter be marked as withdrawn as he was no longer interested in the same. The matter was thereby marked as withdrawn. Counsel for the Respondent intimated to the court that he would be seeking costs. Counsel for the 3rd and 4th Interested Parties intimated that he will not be seeking for costs. Other interested parties did not participate in these proceedings.
2. The court directed that the issue of costs be canvassed through written submissions. The Respondent filed their submissions on 12/04/2024. The Petitioner did not file written submissions.



3. He submitted that despite the fact that the matter was dismissed, the Respondent is entitled to costs as he had appointed an advocate to act on his behalf and he incurred some expenses when he paid legal fees. Relying on a myriad of cases, he emphasised that costs is a discretion of the court and that costs are not just awarded to the winning party in a suit but also to a party who was dragged to court whether or not he/she is the winning party. Therefore, the Respondent is entitled to costs for being unnecessarily included as a party to the suit.
4. It is trite that costs-follow the event and are not awarded as a matter of right but are awarded at the discretion of the Court guided by relevant principles and such discretion, like all discretionary powers of court must be exercised judiciously.
5. The Supreme Court in *Abote v Kawaka & 4 others* (Petition 16 (E019) of 2022) [2022] KESC 69 (KLR) (Civ) (4 November 2022) (Ruling) emphasized that costs follow the event by stating thus;

“Further, this court has set out legal principles that guide the grant of costs including in the case of *Jasbir Singh Rai & 3 others v Tarlochan Singh Rai & 4 others*, (supra) where we held that ordinarily, costs follow the event and costs should not be used to punish the losing party, but to compensate the successful party for the trouble taken in prosecuting or defending a suit. It was our finding that:“(15)It is clear that there is no prescribed definition of any set of “good reasons” that will justify a court’s departure, in awarding costs, from the general rule, costs-follow-the-event. In the classic common law style, the courts have proceeded on a case-by-case basis, to identify “good reasons” for such a departure. An examination of evolving practices on this question, shows that, as an example, matters in the domain of public-interest litigation tend to be exempted from award of costs.” (Emphasis ours).”

6. As to whether costs can be awarded where the matter is withdrawn, the Supreme court in *Abdirahman v Mandera County Government & 5 others* (Petition 14 (E016) of 2022) [2022] KESC 71 (KLR) (4 November 2022) (Ruling), observed that the matter was not ripe for hearing despite the 2nd respondent having filed a notice of preliminary objection which had not been heard or directions given. While applying the principle that costs followed the event, the court held that the event to which costs would follow had not materialized and the respondents did not stand to suffer prejudice if the petition of appeal was withdrawn without costs. The court ruled that there was no reason to award costs, the limited court attendances by the respondents, which were in any event of the nature of mentions notwithstanding.
7. The court relied on its findings in the case of *Sonko v Clerk, County Assembly of Nairobi City & 12 others* (Petition 14 (E021) of 2021) [2022] KESC 17 (KLR) (19 May 2022) (Ruling) where the apex court held as follows:

“Having so stated, we note from the record that the petition was withdrawn before the respondents had filed any responses or substantive submissions to the appeal save for the 7th respondent who filed a notice of preliminary objection. The appeal, at the time of withdrawal was not ripe for hearing. While applying the principle in *Jasbir Singh Rai* that costs normally follow the event, has an event to which costs would follow materialized? The answer is in the negative. Such an event has not happened. We note that the applicant’s appeal did not proceed as the occurrence of the event that would have led to the applicant being successful crystallized as the 11th respondent was sworn in as Governor of Nairobi County. We therefore come to the conclusion that each party shall bear its costs before this court.”



8. In the instant case, the Petition was not ripe for hearing, as pleadings had not closed and that the same was withdrawn before close of pleadings. The Respondent had not responded to the petition and had only filed a preliminary objection and the submissions to the said preliminary objection. None of the parties were opposed to the withdrawal of the suit save for the prayer for costs by the Respondent.
9. I have applied my mind to the applicable law on costs and the submissions on record. It is clear from the record that the Respondent's counsel had taken instructions and acted on the same by filing a notice of preliminary objection. To that extent, sending away the Respondent without an award of costs would be an arbitrary exercise of discretion that would visit an injustice on the Respondent.
10. The question this court would grapple with then, is, to what extent should those costs be awarded. The ready answer is found by a perusal of the record which shows that the matter had not ripened for hearing and neither was the preliminary objection raised canvassed.
11. In those circumstances the order that commends itself is an award of costs to the Respondent limited to instruction fee and proven disbursements. It is so ordered.

DATED SIGNED AND DELIVERED THIS 20TH DAY OF JANUARY, 2025.

A.K. NDUNG'U

JUDGE

