



**Rabadia Enterprises Limited v Mayfair Insurance Company Limited (Commercial Case E286 of 2020) [2025] KEHC 2976 (KLR) (Commercial and Tax) (17 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 2976 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL CASE E286 OF 2020**

**A MABEYA, J  
MARCH 17, 2025**

**BETWEEN**

**RABADIA ENTERPRISES LIMITED ..... PLAINTIFF**

**AND**

**MAYFAIR INSURANCE COMPANY LIMITED ..... DEFENDANT**

**RULING**

1. This ruling determines the application dated 14/12/2023 in which the applicant seeks the following orders: -
  - a. Spent
  - b. This Honourable Court be pleased to issue directions regarding costs in the suit dated 27<sup>th</sup> July 2020 and the Application dated 26<sup>th</sup> August 2021.
  - c. The costs of the application be provided for.
2. The application was predicated on the grounds set out in the Motion as well as the supporting affidavit of Ned Chemoiwa, counsel for the applicant. The applicant averred that by a ruling dated 13/10/2022, the Court ordered that the respondent's suit be referred to arbitration as provided in Clause 9 of the Insurance Policy between them and further that "the costs of the application shall abide the outcome of the Arbitration".
3. That in violation of Clause 9 of the Insurance Policy, the respondent failed to proceed with the arbitration within the provided 12 months, in essence abandoning his claim. That the general rule is that costs shall follow the event and that it had incurred legal costs and incidental in defending itself from wrongly instituted suit. It was further submitted that the costs of the application dated



7/10/2021 were left to abide the outcome of the arbitration. That there was no order or directions as to costs in the event the respondent failed to proceed with arbitration.

4. It was submitted that it had provided reasons why it should have been awarded costs had been held in *M'ndaka Mbiuki v James Mbaabu Mugwiria* [2020] eKLR and *Salima Hirsi v Kinoti Imanyara & 2 Others* [2009] eKLR.
5. The applicant submitted that the respondent was the unsuccessful party in the main suit and thus was entitled to costs by virtue of having filed a defence and application to strike out the respondent's suit. It on the Supreme Court case of *Jasbir Singh Rai & 3 Others v Tarlochan Singh Rai & 4 Others* SC Petition No. 4 of 2012 [2014] eKLR where it was held that a party who files suit will bear the legal costs in the event the suit fails. The same had been reiterated in the cases of *Pacis Insurance Company Ltd v Francis Njeru Njoka* [2018] eKLR, *David Kiptum Korir v Kenya Commercial Bank & Another* [2021] eKLR and *Maggie Mwauki Mtalaki v Housing Finance Company of Kenya* [2015] eKLR.
6. In opposition, the respondent through its lawyer John Ochwo swore a replying affidavit on the 18/1/2024 in which he deposed that the applicant was not entitled to instruction fees as the suit was not defended. That the applicant was entitled to the costs of the application dated 26/8/2021.
7. That in the Court's ruling of 13/10/2022, the Court had declined to assume jurisdiction over the suit and had referred the same to arbitration without making orders as to costs as the same would be made in the arbitration. That the only costs reserved in the ruling of 13/10/2022 were the costs for the application dated 26/10/2021.
8. The respondent further submitted that the applicant mischievously filed a defence in the main suit in order to justify the claim for instructions fees and that the applicant's claim that he had defeated the main suit was unfounded. That by referring the matter to arbitration, the Court exercised its discretion as provided under section 27 of the *Civil Procedure Act*. That the applicant had failed to advance good reasons why there should be a review of the ruling of 13/10/2022 and that the authorities relied on by the applicant did not apply to the suit.
9. I have considered the parties' contestations. That ruling of 13/10/2021 arose from the application dated 26/10/2020 in which the applicant sought to refer the dispute between itself and the respondent to arbitration. The question before the Court is, who is liable to pay for the costs of the present suit?
10. Section 27 of the *Civil Procedure Act*, provides: -
  - 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 give all the necessary directions for the purposes aforesaid; and the fact that the court 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 direct".



11. In Republic v Rosemary Wairimu Munene, Ex-Parte Applicant Vs Ihururu Dairy Farmers Co-operative Society Ltd [2014] eKLR it was held: -

“The issue of costs is in the discretion of the court as provided under the above section. The basic rule on attribution of costs is that costs follow the event..... It is well recognized that the principle costs follow the event 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 case”.

12. In the present case, the ruling provided that: -

“The costs of the application shall abide the outcome of the arbitration.”

13. This meant that the Court left the issue of costs of the application to be determined in the arbitral proceedings that were to follow. Costs is in the discretion of the Court. Like in all cases of exercise of discretion, it must be shown that a court wrongly exercised its discretion. There was no allegation or contest that the Court exercised its discretion wrongly when it referred the matter to arbitration and stating that costs abide the outcome of the arbitration.

14. The said has not been set aside or reviewed to warrant this Court’s interference with the same. If the applicant was aggrieved by the ruling of 13/10/2021, it ought to have either sought the review of or appealed against the same.

15. In my view, once the court referred the suit to arbitration and held that costs abide the outcome of the arbitration it became functus officio.

16. The upshot of the above is that I find that the application dated 14/12/2023 to be without merit and I proceed to dismiss with costs.

It is so ordered.

**SIGNED AT NAIROBI THIS 4<sup>TH</sup> DAY OF MARCH, 2025.**

**A. MABEYA, FCI Arb**

**JUDGE**

**DATED AND DELIVERED AT NAIROBI THIS 17<sup>TH</sup> DAY OF MARCH, 2025.**

**F. GIKONYO**

**JUDGE**

