



Republic v Music Copyright Society of Kenya Limited & another; Oira & 3 others (Interested Parties); Wambeo (Exparte Applicant) (Application E211 of 2024) [2025] KEHC 2423 (KLR) (Judicial Review) (7 March 2025) (Ruling)

Neutral citation: [2025] KEHC 2423 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
APPLICATION E211 OF 2024
JM CHIGITI, J
MARCH 7, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

MUSIC COPYRIGHT SOCIETY OF KENYA LIMITED 1ST RESPONDENT

ELECTION NOMINATION COMMITTEE 2ND RESPONDENT

AND

DR. HEZEKIEL OIRA INTERESTED PARTY

DR. EZEKIEL MUTUA INTERESTED PARTY

MOSES MAIYO INTERESTED PARTY

JAMES KISERO INTERESTED PARTY

AND

VICTOR WANGILA WAMBEO EXPARTE APPLICANT

RULING

1. The only issue that forms the subject of this ruling is costs.
2. When this matter came up on 25 October 2024, parties recorded a consent settling the suit save for the question as to who should bear the costs of the suit. The parties agreed to settle the issue our court.



3. When the matter subsequently came up for mention to report whether parties had agreed on the issue of costs, the parties indicated that they had not agreed. This court is invited to make a determination on the costs.

The Exparte Applicant's case:

4. The *Exparte* Applicant claims that he is entitled to costs of the suit because of the trouble that the respondents dragged him into court. He argues that he has expended a lot of energy campaigning for the elections just to find that his name had been struck out by the respondents from the list of the nominees on April 12, 2024 without justification. He argues that he was forced to engage advocate.
5. It is his case that he was forced to move the court under a certificate of urgency to secure conservatory orders. He also had to defend an application filed by the applicants to dismiss the suit.
6. It is his case that this was a fairly simple suit and that the Respondents engaged in a misadventure necessitating the filing of the suit. It is his argument that had the Respondents conceded the suit, then the inconvenience's and costs would not have been incurred.
7. The costs he incurred included instruction fees, Court attendance fees, filing fees for services fees his court attendance several attendances getting up fees and disbursements.

Analysis and determination:

8. The Court has looked at the background of this suit noting that the dispute that precipitated the suit was related to the internal elections and leadership of the Copyright society of Kenya Limited.
9. In *Joseph Oduor Anode v. Kenya Red Cross Society*, Nairobi High Court Civil Suit No. 66 of 2009; [2012] eKLR Odunga, J. thus observed:

“...whereas this Court has the discretion when awarding costs, that discretion must, as usual, be exercised judicially. The first point of reference, with respect to the exercise of discretion is the guiding principles provided under the law. In matters of costs, the general rule as adumbrated in the aforesaid statute [the *Civil Procedure Act*] is that costs follow the event unless the court is satisfied otherwise. That satisfaction must, however, be patent on record. In other words, where the Court decides not to follow the general principle, the Court is enjoined to give reasons for not doing so. In my view it is the failure to follow the general principle without reasons that would amount to arbitrary exercise of discretion ...” [emphasis supplied].
10. In the instant suit parties entered into a consent settling the suit which no doubt promoted the values and principles of alternative dispute resolution as provided for under Article 159 of the *Constitution*.
11. Consents emanating from alternative dispute resolution mechanisms are geared towards promoting a cordial co-existence between the litigants who had fallen out. It goes a long way towards fostering, building and promoting harmony.
12. The *Civil Procedure Act* (Cap. 21, Laws of Kenya), the primary law of judicial procedure in civil matters, thus stipulates (Section 27(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 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” [emphases supplied].

13. *Halsbury’s Laws of England*, 4th ed Re-Issue (2010), Vol. 10, para. 16:

“The court has discretion as to whether costs are payable by one party to another, the amount of those costs, and when they are to be paid. Where costs are in the discretion of the court, a party has no right to costs unless and until the court awards them to him, and the court has an absolute and unfettered discretion to award or not award them. This discretion must be exercised judicially; it must not be exercised arbitrarily but in accordance with reason and justice” [emphasis supplied].

14. In *Jasbir Singh Rai & 3 others v Tarlochan Singh Rai & 4 others* [2014] eKLR it was held, to the same intent Mr. Justice (Rtd.) Kuloba thus writes in his work, *Judicial Hints on Civil Procedure*, 2nd ed. (Nairobi: LawAfrica, 2011), p. 94:

“Costs are [awarded at]

(13) the unfettered discretion of the court, subject to such conditions and limitations as may be prescribed and to the provisions of any law for the time being in force, but they must follow the event unless the court has good reason to order otherwise: *Chamilabs v. Lalji Bhimji and Shamji Jinabhai Patel*, High Court of Kenya, Civil Case No. 1062 of 1973.”

(14) So the basic rule on attribution of costs 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. In Justice Kuloba’s words [*Judicial Hints on Civil Procedure*, at p.94]:

“The objects of ordering a party to pay costs is to reimburse the successful party for amounts expended on the case. It must not be made merely as a penal measure...Costs are a means by which a successful litigant is recouped for expenses to which he has been put in fighting an action.”

(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.

15. The court is further guided by the case of *Morgan Air Cargo limited v Everest Enterprises Limited* wherein it was held that in determining the issue of costs, the court should take into consideration the following factors:

a. the conduct of the parties



- b. the subject of litigation
 - c. the circumstances which led to the institution of the proceedings
 - d. the events which eventually led to their termination
 - e. the stage at which the proceedings were terminated
 - f. the manner in which they were terminated
 - g. the relationship between the parties and
 - h. The need to promote reconciliation amongst the disputing parties pursuant to Article 1 (c) of the Constitution.
16. The harmonious coexistence between the litigants is especially critical in the entertainment industry. Cordial relationships as manifested in the consent will help in promoting the national values and principles of governance as espoused in article 10 of the Constitution.
17. This court has however noted that the Applicant has advanced an argument that he incurred expenses by way of instruction fees, Court attendance fees, filing fees for services fees leading up for his court attendance fees or are the several attendances, getting up and disbursements. These are items that are regulated by the Advocates remuneration order and they call for strict proof.

Disposition:

18. The applicant has made out a case for the grant of order of for costs.
19. This court lacks the capacity to engage in the assessment of costs in cases like the instant suit where a party has advanced such arguments. That sits well with the Deputy Registrar’s docket since they have the capacity to tax the bills of costs.
20. In the circumstances of this Court finds the following orders to be appropriate.
- Order:
- 1. The Applicant is hereby granted an order for costs.
- The Applicant is at liberty to file a Bill of Costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 7TH DAY OF MARCH, 2025

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J. CHIGITI (SC)

JUDGE

