



**Kenya National Federation of Sugar Cane Farmers v Transmara Sugar Company Limited
(Constitutional Petition E001 of 2022) [2025] KEHC 4787 (KLR) (4 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4787 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KILGORIS
CONSTITUTIONAL PETITION E001 OF 2022**

CM KARIUKI, J

APRIL 4, 2025

BETWEEN

**KENYA NATIONAL FEDERATION OF SUGAR CANE
FARMERS PETITIONER**

AND

TRANSMARA SUGAR COMPANY LIMITED RESPONDENT

RULING

1. By petition dated 29.7.2022, the petitioner lodged an instant matter seeking relief against the respondent. On 11.8.2022, the respondent lodged a rejoinder via a bundle with a volume of documents to buttress its case. Subsequently, an objection was raised based on the jurisdiction of the court as there was an arbitral clause in the contract, which is the foundation of the instant dispute. Relying on the doctrine of exhaustion, the court stayed proceedings and referred the matter for arbitration vide the ruling of 31.10.2022.
2. The arbitration never occurred as the court noted that the arbitral committee was engaged in dilatoriness. The petitioner changed its mind and decided to amend the petition; however, it never pursued that path but settled on withdrawing the suit. They never sought to persuade the respondent to forgive them on issue costs but opted to go to court to urge it to exercise discretion in not awarding the respondent costs.
3. In Kenyan civil cases, the principle of awarding costs is that they "follow the event," meaning the successful party usually receives costs, unless the court, for good reason, orders otherwise, as outlined in Section 27 of the *Civil Procedure Act*. Of course, the court has to be guided by various elements, namely.
4. Discretion of the Court: The court has discretion in awarding costs, meaning it is not a strict rule that costs always follow the event. Costs Follow the Event": The general rule is that costs should follow the



- event, meaning the successful party is usually awarded costs to compensate them for the trouble of prosecuting or defending the case.
5. Departure from the General Rule: The court can depart from the general rule for good reason and must provide reasons for doing so. Purpose of Cost Award: An award of costs is not meant to punish the losing party but rather to compensate the successful party for the costs incurred in prosecuting or defending the case.
 6. Factors Influencing Cost Award: Courts consider various factors when deciding on costs, including the outcome of the suit, the conduct of the parties, and the circumstances of the case. Public Interest Litigation: Parties are usually ordered to bear their costs in public interest litigation. Judicial Discretion: The court's discretion must be exercised judiciously, and a party cannot be denied costs unless it can be shown that they acted unreasonably. Failure to Award Costs: If a court fails to address the issue of costs or gives reasons for not awarding costs to the successful party, it may be a basis for interference by a higher court.
 7. Taxation of Costs: After a court makes an order for costs, the successful party can file a bill of costs for taxation before a Taxing Master assesses the reasonableness of the costs claimed.
 8. This case has been stalled at the arbitral committee stage, which seems to have frustrated the petitioner in pursuing justice. However, the respondent was also dragged to court and has also incurred costs.
 9. In Kenyan civil cases, a court can award costs at a lower scale of advocate remuneration (Schedule 7) instead of the higher scale (Schedule 6) if it makes an order to that effect or if the case is determined in a summary manner or settled before the first hearing date.
 10. General Rule: Unless the court orders otherwise, costs in the High Court are taxed according to Schedule 6 of the *Advocates (Remuneration) Order*. Lower Scale: Schedule 6 provides for both higher and lower cost scales. If the court does not order otherwise, the costs are taxed according to the lower scale.
 11. Court's Discretion: The court has the discretion to tax those costs according to the lower scale, even if the higher scale would otherwise apply. Summary Determination or Settlement: If a suit is determined in a summary manner without a full trial or if it is settled before the first hearing date, the fee payable to the advocate is reduced.
 12. The court found that the withdrawal was not technically grading the respondent as a victor in the contest, but still, the respondent was ready to go on in the contest till the conclusion. Thus, if there had been consent to withdraw the matter, the petitioner would have been condemned to pay the costs taxed at a lower scale of the *ARO*. The circumstances of the instant matter I feel it should be equated to withdrawal by consent, as the matter never proceeded,
 - i. Thus, the costs are awarded to the respondent but will be taxed at a lower scale under the Advocate Remuneration Order in force.

DATED, SIGNED, AND DELIVERED AT KILGORIS THROUGH MICROSOFT TEAMS ONLINE APPLICATION THIS 4TH DAY OF APRIL, 2025.

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CHARLES KARIUKI
JUDGE

