



Sahin v Paragon Electronics Limited & another; Bamburi Special Products Limited (Interested Party) (Miscellaneous Application E006 of 2023) [2025] KEHC 4245 (KLR) (Judicial Review) (3 April 2025) (Ruling)

Neutral citation: [2025] KEHC 4245 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW**

MISCELLANEOUS APPLICATION E006 OF 2023

JM CHIGITI, J

APRIL 3, 2025

BETWEEN

EBUBEKIR SAHIN APPLICANT

AND

PARAGON ELECTRONICS LIMITED 1ST RESPONDENT

THE HIGH COURT AT NAIROBI 2ND RESPONDENT

AND

BAMBURI SPECIAL PRODUCTS LIMITED INTERESTED PARTY

RULING

1. The application before this Court is the Chamber Summons 26th March, 2024. The application is brought Under Rule 11 of the [Advocates \(Remuneration\) Order 1962](#); sections 3 & 12 (4) of the [Employment and Labour Relations Court Act](#), 2011; sections 1A. 18 and 3A of the [Civil Procedure Act](#); and all enabling provisions of the law. It seeks the following orders:
 1. That the entire decision of the Learned Taxing Officer, Hon. Christine Asuna Okello dated 27th February 2024 be set aside.
 2. That the costs of this application be provide for.
2. The application is supported by Supporting Affidavit of Eubebekhir Sahin sworn on 25th March, 2024.



3. According to the Applicant, he commenced this cause through an Application under Certificate of Urgency dated 18th January 2023 which application was opposed by the 1st Respondent through two preliminary objections (PO).
4. It is its case that on 30th June 2023, he withdrew the said application disposing the entire application/suit, with costs in the cause.
5. It is the Applicants case that costs in the cause means that the unsuccessful party at the end of the proceedings, would pay the costs to the successful party. With his withdrawal of the Application, there was nothing else left for determination before this court.
6. It is contended that despite the clear court orders, the 1st Respondent proceeded to award themselves costs unilaterally and arbitrarily by filing and taxing their Bill of Costs in the matter which action the applicant terms as pre-mature since the 1st respondent was not awarded any costs.
7. It is the Applicant's case that the taxing officer delivered her ruling without considering the Respondent's submissions dated the 7th December 2023 in respect to whether the 1st Respondent was awarded costs of the suit.
8. Further it argues that the taxing officer misdirected herself and erred in holding that the Respondent was entitled to receive the costs of the suit and taxing the 1st Respondent's Bill of Costs by awarding the 1st Respondent Kes. 199,003/- in her ruling on 27th February 2024 as costs of this suit.
9. On 5th March 2024 through his advocates the Applicant wrote to the taxing master requesting for reasons for the taxation decision which letter was responded to on 15th March 2024 wherein the taxing master responded vide her letter dated 12th March 2024 informing him to refer to the reasons outlined in the ruling delivered on 27th February 2024.
10. The Applicant contends that the 1st Respondent did not have the right to costs unless the court had made an order of costs in its favour and it is only when such an order is made that the 1st Respondent can enforce the same.
11. It is the Applicant's case that the taxing officer failed to apply judicial principles of taxation thereby arriving at a glaringly wrong decision and should the decision be allowed to stand the 1st Respondent will proceed with execution of the costs which will cause irreparable loss and damage to him.
12. The Applicant submitted that the court is entitled to look at inter alia the events which eventually led to the termination of the proceedings, the stage at which the proceedings were terminated, and the manner in which they were terminated. See *Cecilia Karuru Ngayu v Barclays Bank of Kenya & another* [2016] eKLR which relies on the decision in *Hussein Janmohamed & Sons vs Twentsche Overseas Trading Co. Ltd* {1967} EA 287 and Mulla 12th Edition AT Page 150.
13. The *Halsbury's Laws of England*, 4th Edition (Re-issue), {2010}, Vol.10. at para 16 provides that:

“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 to award them. This discretion must be exercised judicially; it must not be exercised arbitrarily but in accordance with reason and justice.”



14. Justice (Retired) Richard Kuloba in [*Richard Kuloba, Judicial Hints on Civil Procedure*, 2nd Edition, page 99 states as follows:

“The words “the event” mean the result of all the proceedings to the litigation. The event is the result of the entire litigation. It is clear however, that the word “event” is to be regarded as a collective noun and is to be read distinctively so that in fact it may mean the “events” of separate issues in an action. Thus, the expression “the costs shall follow the event” means that the party who on the whole succeeds in the action gets the general costs of the action, but that, where the action involves separate issues, whether arising under different causes of action or under one cause of action, the costs of any particular issue go to the party who succeeds upon it. An issue in this sense need not go to the whole cause of action, but includes any issue which has a direct and definite event in defeating the claim to judgement in the whole or in part”

15. Reliance is placed in *Jasbir Singh Rai & 3 others v. Tarlochan Singh Rai & 4 others*, Sup. Ct. Petition No. 4 of 2012 ([2014] eKLR) stated that:

“(18) It emerges that the award of costs would normally be guided by the principle that “costs follow the event”: the effect being that the party who calls forth the event by instituting suit, will bear the costs if the suit fails; but if this party shows legitimate occasion, by successful suit, then the defendant or respondent will bear the costs. However, the vital factor in setting the preference is the judiciously-exercised discretion of the court, accommodating the special circumstances of the case, while being guided by ends of justice. The claims of the public interest will be a relevant factor, in the exercise of such discretion, as will also be the motivations and conduct of the parties, prior-to, during, and subsequent-to the actual process of litigation....

Although there is eminent good sense in the basic rule of costs– that costs follow the event – it is not an invariable rule and, indeed, the ultimate factor on award or non- award of costs is the judicial discretion. It follows, therefore, that costs do not, in law, constitute an unchanging consequence of legal proceedings – a position well illustrated by the considered opinions of this court in other cases”

16. It is the Applicant’s case that the decision of the taxing master be set aside with costs to him.

The 1st Respondent’s case;

17. The Respondents oppose the Application with Grounds of opposition dated 27th June, 2024. It is contended that:

1. In the Ruling of 3rd July 2023, the Court allowed the Exparte Applicant to withdraw the matter and directed that costs should follow the events.
2. They filed the Judicial proceedings herein on 18th January 2023 challenging the judicial decision made on 12th October 2022 in HCC 314 of 2022 by way of Judicial Review asking this Court, a court of equal jurisdiction, to quash the Justice Serгон’s decision instead of appealing against the decision.



3. Noting the obvious legal and procedural absurdity of the suit the 1st Respondent then filed a Preliminary Objection dated 10th May 2023.
 4. On 10th May 2023 the parties were directed to file their submissions on the 1st Respondent's Preliminary Objection.
 5. On 3rd July 2023 the court allowed the Applicant to withdraw the matter but costs to follow the events.
 6. The version of the court order unilaterally extracted is inaccurate and does not reflect the correct record. In particular, the court never ordered that the Notice of Withdrawal be adopted as a court order. The Court also never used the words "Costs to be in the Cause".
 7. The version of the order is also illegal as it was not extracted in compliance with the procedure laid out in Order 21 Rule 8 of the *Civil Procedure Rules, 2010*.
 8. The Applicant has not shown any error in the taxation by the Deputy Registrar and the Application does not meet the threshold for the orders sought.
18. It is their submission that the Reference is defective for having been filed out of time and without leave and the Applicant has not filed or made an application for enlargement of time.
19. Reliance is placed in *Al Yusra Restaurant Limited v Kenya Conference of Catholic Bishop & Another* [2021] eKLR the court upheld this position as follows: -
- “The ruling by the Deputy Registrar on taxation delivered on 29th March, 2019 clearly stated the reasons for the decision she made. It therefore means that from the time of receipt of the ruling and reasons on 3rd April, 2019 the 1st Respondent/ Applicant and its advocate became aware of the reasons behind the taxation and time had already started running. The ruling by Justice Korir on 30th April, 2020 clearly states that the application was filed out of time, and what the 1st Respondent/ Applicant ought to have done. Instead, of seeking leave in line with the provisions of paragraph 11 (40) of the Advocates Remuneration Order, the 1st Respondent/ Applicant and its advocate went to sleep. Counsel talks of having served the parties with a notice for filing an application for extension of time dated 15th May, 2020. Besides that, he did not take any steps to file a reference. The reference ought to have been filed within 14 days of delivery of the ruling on taxation.”
20. It is their case that this court made an order that costs would follow the cause or the event which in effect means that since the Applicant filed the suit then withdrew it, the Applicant would bear the costs of the suit. Reliance is placed in *Jasbir Singh Rai & 3 Others v Tarlochan Singh Rai & 4 Others supra*.
21. The 1st Respondent argues that even assuming that the Court stated that “costs would be in the cause” as alluded to by the Applicant in the unilaterally extracted order we submit that the expression “costs would be in the cause” means that the costs would abide the outcome of the matter and invite the court to draw guidance from the decision of the Supreme Court of England in *Stratford (J. T.) & Son Ltd v Lindley (No. 2)* [1969] EWCA Civ J0714-1 where the Court provided the following definition of the phrase “costs in the cause”
- “There is no definition in any law book of the words "costs in the cause". But every pupil on his first day in chambers is told what it means. "Costs in the cause" means that the costs of those interlocutory proceedings are to be awarded according to the final award of costs in the action. If the plaintiff wins and gets an order for his costs, he gets those interlocutory



costs as part of his costs of the action against the defendant. Vice versa, if the defendant wins and gets an order for his costs, he gets those interlocutory costs as part of his costs of the action against the plaintiff”

22. It is their submission that that the court only addressed the costs for the interlocutory proceedings and was therefore silent on the costs for the entire suit upon its withdrawal.
23. In the circumstances the principles to be applied are the principles of what the court’s silence means in law.
24. In *Losipan v Komba* (Civil Appeal 235 of 2023) [2024] KEHC 8883 (KLR) dealt with a situation where the Court was silent on costs. The Court in adjudging where the costs lie stated as follows:

“The Court of Appeal in *Supermarine Handling Services Ltd v Kenya Revenue Authority* [2010] eKLR (Civil Appeal 85 of 2006), had the following to say when the court was called upon to deal with a case where the trial court had failed to pronounced itself on the issue of costs; -“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. See Section 27 (1) of the *Civil Procedure Act*.”

In the instant appeal, to the extent that the trial magistrate did not give any reasons for his decision not to award any costs to the Appellant, this court is entitled to intervene, especially having found that the appellant was the successful party in the litigation in the lower court and was therefore entitled to costs thereat. In the premises, I find that the trial magistrate committed an error of law. This appeal is therefore merited and hereby succeeds.”

25. It is further submitted that this court in its Ruling of 3rd July 2023 awarded costs to the Respondents and that in law, had the Court intended to deny the Respondents the costs of the withdrawn suit, the court would have gone ahead and given a reason for such a decision.
26. Reliance is placed in the case of *Samson K.A. Tim v D.M. Machage* [2019] eKLR under Section 27 of the *CPA* cited in the Notice of Withdrawal dated, where there is a withdrawal of a suit, the party who filed and wishes to now withdraw a suit must, as a general rule, pay the costs of the suit. And where that general rule is not followed, a good reason would ordinarily be cited by the Court. The court expressed itself as follows:

“I do not see, in terms of the wording of section 27 of the *Civil Procedure Act*, a “good reason” to order against the general principle that “costs shall follow the event.” Once withdraw the suit wholly, the suitor must as a general rule pay to the defendant the costs of the suit. I do not see a good reason in this suit to depart from this general rule.”

27. Reliance is also placed in the case of *First American Bank of Kenya v Shah and Others* [2002] eKLR where the court observed as follows:

“The Court cannot interfere with the taxing officer’s decision on taxation unless it is shown that either the decision was based on an error of principle, or the fee awarded was manifestly excessive as to justify an inference that it was based on an error of principle.”

28. It is the 1st Respondent’s case that the Reference is fatally defective having been filed out of time and without leave of court and thus it should be struck out in limine with costs.



Analysis and Determination

29. Upon perusing the application, the response and the rival submissions following are the issues for determination;
1. Whether the application was filed within time.
 2. Whether taxing master made an error.

Whether the application was filed within time.

30. It is not in dispute that the taxing officer delivered her ruling on 27th February 2024 as costs of this suit.
31. It is also not in dispute that on 5th March 2024 the Applicant wrote to the taxing master requesting for reasons for the taxation decision.
32. The Application was filed on 26th March 2024 with the 14 days having lapsed on 13th March 2024.
33. The Applicant has not filed or made an application for enlargement of time.
34. In the case of *Al Yusra Restaurant Limited v Kenya Conference of Catholic Bishop & Another* [2021] eKLR the court upheld this position as follows:

“The ruling by the Deputy Registrar on taxation delivered on 29th March, 2019 clearly stated the reasons for the decision she made. It therefore means that from the time of receipt of the ruling and reasons on 3rd April, 2019 the 1st Respondent/ Applicant and its advocate became aware of the reasons behind the taxation and time had already started running. The ruling by Justice Korir on 30th April, 2020 clearly states that the application was filed out of time, and what the 1st Respondent/ Applicant ought to have done. Instead, of seeking leave in line with the provisions of paragraph 11 (40) of the Advocates Remuneration Order, the 1st Respondent/ Applicant and its advocate went to sleep. Counsel talks of having served the parties with a notice for filing an application for extension of time dated 15th May, 2020. Besides that, he did not take any steps to file a reference. The reference ought to have been filed within 14 days of delivery of the ruling on taxation.”

35. It is this court’s finding that the Reference is defective for having been filed out of time and without leave. The court lacks jurisdiction to entertain an application that is filed out of time.
36. The second issue falls by the waysides.

Order:

The Application is dismissed with costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 3RD DAY OF APRIL 2025

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J. CHIGITI (SC)
JUDGE

