



REPUBLIC OF KENYA



**Sidian Bank Limited & another v Muuru (Civil Appeal  
E056 of 2024) [2025] KEHC 6636 (KLR) (22 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6636 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYERI  
CIVIL APPEAL E056 OF 2024  
DKN MAGARE, J  
MAY 22, 2025**

**BETWEEN**

**SIDIAN BANK LIMITED ..... 1<sup>ST</sup> APPELLANT**

**STARTRUCK AUCTIONEERS ..... 2<sup>ND</sup> APPELLANT**

**AND**

**KENNEDY GITONGA MUURU ..... RESPONDENT**

**RULING**

1. This is ruling in respect to a post judgment application. On 23.01.2025, this court made the following orders in this matter:
  - a. The Appeal lacks merit and is accordingly dismissed.
  - b. The Appellants shall bear the Respondent's costs of the Appeal of Kshs. 55,000/=, which shall be paid within 45 days, in default execution do issue.
  - c. The file is closed.
2. The raison d'être for the decision was set out as follows:
26. Reading the issues before the trial court, I cannot but resist the temptation to agree with the lower court that there was a prima facie case. I cannot on my side find any default in January. There was no notice to that effect. To make matters worse, the vehicle was retained under false pretenses. Any default in February and March is irrelevant to actions carried out in January up to 8<sup>th</sup> February.
3. At no time did this court find that no debt is due to the appellant. The matter before the court related to actions in the month of January 2024. However, after dismissing the appeal with costs the court was surprised on the matters the parties were noy agreeing on.



4. The background being that in a bid to be in compliance with the order regarding costs, that were ordered the appellant credited the entire sum of costs into the respondent's account. The respondent will have none of it. He wants to be paid.
5. The Respondent threatened to execute the decree in regard to costs. This forced the appellant to take out an application dated 6.03 .2025 for the court to certify that they have paid. The respondent filed a humongous document which he indicated to be grounds of opposition. They are not grounds of opposition as they raise factual grounds which is not sustainable. It is unnecessary to go through lengthy documents filed herein. The same address the issue of whether costs are payable or not. This issue was decided in the judgment and is not available.
6. The sole issue is whether the costs have been paid. To this the respondent has no answer. Order 22 rule 1 has set for the modes of paying money under decree, as doth:
  - (1) All money payable under a decree or order shall be paid as follows-
    - (a) into the court whose duty it is to execute the decree;
    - (b) direct to the decree-holder; or
    - (c) otherwise as the court which made the decree directs.
  - (2) Where any payment is made under subrule (1) (a), notice of such payment shall be sent by the court to the decree-holder and his advocate, if any.
7. Further, Order 22, rule 2 of the Civil Procedure Rules, provide as follows regarding payment out of court to decree-holder:
  1. Where any money payable under a decree of any kind is paid direct to the decree-holder or the decree is otherwise adjusted in whole or in part to the satisfaction of the decree-holder, the decree holder may certify such payment or adjustment to the court whose duty it is to execute the decree, and the court shall record the same accordingly.
  2. The judgment-debtor also may inform the court of such payment or adjustment, and apply to the court to issue a notice to the decree-holder to show cause, on a day to be fixed by the court, why such payment or adjustment should not be recorded as certified; and if, after service of such notice, the decree-holder fails to show cause why the payment or adjustment should not be recorded as certified, the court shall record the same accordingly.
8. The payment has been credited into the Respondent's account. This is payment pursuant to order 22 rule 1(b) of the civil procedure rules. It is irrelevant whether the judgment creditor's account is in debt or in credit. It is a matter of account for which this court has no say. The main issue is that the costs were credited to the judge creditor account in compliance with the law.
9. In this case, the Applicant paid the debt that were due and owing. If the account were in the negative, it is not an issue that is justiciable. Having been paid by way of crediting an account belonging to the judgment creditor, the debt was discharged. In *James Muniu Mucheru v National Bank (K) Limited* [2017] eKLR, F Ochieng, as he then was stated as doth:
  39. When a creditor is paid money, he has an obligation to credit payments to the correct account. However, a creditor would not need to insist that it was only the debtor who could remit payments to the account.



10. It is therefore clear that the respondent is having their cake and eating the same. In that spirit the application dated 6.3.2025 is for allowing. It is certified that the crediting of the respondent's account with costs met the obligations to pay costs.

11. The only question is costs. Since the appellant was forced to incur unnecessary costs, the court has discretion in awarding the same. In *Losipan v Komba* (Civil Appeal 235 of 2023) [2024] KEHC 8883 (KLR) (19 July 2024) (Judgment), MA Otieno J posited as doth regarding costs:

In *Punchlines Limited v Joseph Mugo Kibaria & 10 others* [2018] eKLR, the Court of Appeal quoting with approval the decision of the High Court in *Party of Independent Candidates of Kenya v Mutula Kilonzo & 2 others*, HC EP No. 6 of 2013, had the following to say on the issue of costs under section 27 of the *Civil Procedure Act*; -“It is clear from the authorities that the fundamental principle underlying the award of costs is two-fold. In the first place, the award of costs is a matter in which the trial judge is given discretion .... But this is a judicial discretion and must be exercised upon grounds on which a reasonable man could come to the conclusion arrived at. In the second place the general rule that costs should be awarded to the successful party, is a rule which should not be departed from without the demonstration of good grounds for doing so.”

12. In the case of *Rai & 3 others v rai & 4 others* [2014] KESC 31 (KLR), the Supreme Court posited as follows:

“(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.”

13. In the circumstances the application is allowed with costs of Ksh 7,500/=. The same shall be paid within 30 days, failing which the Appellant may be at liberty to debit the account or execute. If there are any auctioneers costs the same shall be payable by the Respondent

### **Determination**

14. In the upshot, I make the following orders:

- d. The Appeal is allowed. The court certifies that crediting of the debtor's account discharged them of the obligation to pay costs as it is sufficient payment.
- e. Costs of ksh 7,500/=. The same shall be paid within 30 days, failing which the appellant may be at liberty to debit the account or execute.



- f. If there are any auctioneers costs the same shall be payable by the Respondent
- g. The file is closed.

**DELIVERED, DATED AND SIGNED AT NYERI ON THIS 22<sup>ND</sup> DAY OF MAY, 2025.  
JUDGMENT DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

**KIZITO MAGARE**

**JUDGE**

In the presence of:

Mr. Mwangi for the Appellant

Mr. Maingi for the Respondent.

Court Assistant – Michael

