



**Cimex Concrete Company Limited v Business Partners International (K) Ltd & another (Civil Case E020 of 2022) [2025] KEHC 8419 (KLR) (16 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8419 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
CIVIL CASE E020 OF 2022  
DO CHEPKWONY, J  
JUNE 16, 2025**

**BETWEEN**

**CIMEX CONCRETE COMPANY LIMITED ..... APPLICANT**

**AND**

**BUSINESS PARTNERS INTERNATIONAL (K) LTD ..... 1<sup>ST</sup> RESPONDENT**

**KENYA SHIELD AUCTIONEERS ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The Plaintiff filed Notice of Withdrawal of suit dated 22<sup>nd</sup> July, 2024, seeking to withdraw the suit with no orders as to costs. The Respondents on their part stated that while they were not opposed to the withdrawal of the suit, they sought for the costs of the suit since they have participated in the suit since it was filed way back in the year 2022. In rejoinder, the Plaintiff's Counsel indicated that the Respondents' Counsel filed Notice of Appointment of Advocates only a few months ago after they had already filed the Notice of Withdrawal of suit.
2. I have gone through the record and note that the suit was filed on 5<sup>th</sup> September, 2022 through Plaintiff alongside a Notice of Motion application. The 1<sup>st</sup> Respondent filed Replying Affidavit to the Notice of Motion on 17<sup>th</sup> January, 2023 and submissions dated 24<sup>th</sup> July, 2023, for which the court delivered a Ruling on 30<sup>th</sup> November, 2023. The court has also noted that the 1<sup>st</sup> Respondent had been participating in the suit on diverse dates through the firm of CM Advocates, then the matter went silent until 22<sup>nd</sup> July, 2024 when the Plaintiff filed a Notice of Withdrawal of the suit. The court finds that having responded to the application and participated in the same suit, the 1<sup>st</sup> Respondent ought to be compensated by way of costs for having been dragged into the case by the Plaintiff who has now opted to withdraw the suit. However, the 2<sup>nd</sup> Respondent did not enter appearance or file any response, hence it is not entitled to any costs. This is line with the principle that costs follow an event,



which principle is provided for under Section 27 of the Civil Procedure Act which means that a party is entitled to compensation of their legal costs. It provides that:-

“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 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 order.”

3. On the argument raised that the 1<sup>st</sup> Respondent’s current advocates came on record after the filing of the Notice of Withdrawal of suit, the court has checked in the Court Tracking System (CTS) and confirmed that the 1<sup>st</sup> Respondent has never changed its advocates since the inception of this suit. On the other hand, the Plaintiff has been the one changing advocates from Muthike & Makworo Advocates to Gichingo Kamangu, Advocates and then Muthoga Omari, Advocates.
4. In view of the aforementioned observations, the court hereby allows the Plaintiff’s application to have the suit withdrawn and the same is marked as withdrawn in its entirety with costs to the 1<sup>st</sup> Respondent only.

It is so ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 16<sup>TH</sup> DAY OF JUNE, 2025.**

**D. O. CHEPKWONY**

**JUDGE**

In the presence of:

M/S Jane Akoth counsel for the Defendants/Respondent

Court Assistant - Martin

