



Cooperative Bank of Kenya Ltd & another v Ongiri (Miscellaneous Application E076 of 2025) [2025] KEHC 12801 (KLR) (12 September 2025) (Ruling)

Neutral citation: [2025] KEHC 12801 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
MISCELLANEOUS APPLICATION E076 OF 2025
DO CHEPKWONY, J
SEPTEMBER 12, 2025**

BETWEEN

THE COOPERATIVE BANK OF KENYA LTD 1ST APPELLANT

RENTCO AFRICA LIMITED 2ND APPELLANT

AND

SAMUEL WYCLIFF ADEE ONGIRI RESPONDENT

RULING

1. The Appellants/Applicants filed a Notice of Motion application dated 28th April, 2025 seeking leave to file an appeal out of time and orders for stay of execution of the Ruling delivered on 30th May, 2025 in Limuru CMCC No. E494 of 2022 pending the hearing of the application .
2. Again, the Appellants/Applicants filed another application dated 2nd May, 2025 seeking stay of execution orders pending the hearing and determination of the initial application. The Respondent opposed both applications through his Replying Affidavit sworn on 22nd May, 2025.
3. When the matter came up in court on 10th June, 2025, the Applicant informed the court that parties had engaged in negotiations and Judgment in the primary suit was reviewed to a sum of Kshs. 604,299/= which amount was paid on 20th May, 2025 and this then compromised the application and therefore the same should be marked as withdrawn with no orders as to costs, the parties having executed a consent on 30th May, 2025 in the primary suit.
4. The Respondent's Counsel indicated that he had no objection to the application being marked as withdrawn but requested that he be granted costs given that he had already filed a response by way of a Replying Affidavit and attended court on this day.
5. In response to this, the Appellant's Counsel stated that the parties had negotiated, reviewed the Judgment and his client having paid the decretal sum, the Respondent's Counsel should not be asking



for his costs. He urged the court to consider the goodwill on the part of the Applicant and in the interest of justice, not to order for payment of costs to the Respondent. He further added that he has not been served with the Replying Affidavit in question.

6. Having listened to the sentiments and the arguments by both counsel the court has considered the same and notes that since the judgment in question has already been satisfied hence compromising the application, the same ought to be marked as withdrawn.
7. The next issue for determination is the request by the Respondent for costs and whether the same is payable. The law on costs is enshrined under the provisions of Section 27 of the Civil Procedure Act which provides as follows:-

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 give all the necessary directions for the purposes aforesaid; and the fact that the court 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 direct.”

8. It is trite law that purpose of awarding costs is not to punish the losing party but to compensate the successful party for the trouble taken in prosecution or defending a case. This position was enunciated in the case of Republic –vs- Rosemary Wairimu Munene, Ex-Parte Applicant –vs- Ihururu Dairy Farmers Co-operative Society Ltd [2014]eKLR, where the Court held as follows:-

“The issue of costs is the discretion of the court as provided under the above section. The basic rule on attribution of costs is that costs follow the event..... It is well recognized that the principle costs follow the event 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 case.

9. I have perused the record and established that this matter was filed in April, 2025 and the same was compromised in June, 2025 and the only action taken therein by the Respondent is filing a Replying Affidavit and attending court in seeking compensation for the trouble taken to defend the application. Thus the Respondent is awarded costs in the sum of Kshs. 10,000/=.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 12TH DAY OF SEPTEMBER 2025.

D. O. CHEPKWONY

JUDGE

In the presence of :

No appearance for and by either party

Court Assistant – Kinyua/Sakina

