



REPUBLIC OF KENYA



KENYA LAW
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**Glojet International Limited v Ecobank Kenya Limited (Civil Case E393 of 2023)
[2025] KEHC 12962 (KLR) (Commercial and Tax) (18 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12962 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE E393 OF 2023
F GIKONYO, J
SEPTEMBER 18, 2025**

BETWEEN

GLOJET INTERNATIONAL LIMITED PLAINTIFF

AND

ECOBANK KENYA LIMITED DEFENDANT

RULING

1. One thing only was put before the court for determination: whether the appellant is entitled to the costs of the suit following withdrawal by the plaintiff.
2. A brief background to this matter is relevant. The plaintiff instituted this suit seeking damages against the defendant for alleged wrongful freezing of its accounts.
3. In its defence, the defendant stated that the accounts were frozen pursuant to a notice from the Asset Recovery Agency and orders of the Anti-Corruption and Economic Crimes Court in Milimani CM. AC Misc. Application No. E150 of 2023; Asset Recovery Agency v I & M Bank Limited & Another. Thus, the defendant argued that it could not disclose the details of the freeze as this would amount to an offence under section 8 of the Proceeds of Crime and Anti Money Laundering Act.
4. The proceedings by the Assets Recovery Agency led to forfeiture of the funds held in the account through a judgment delivered on 11th December 2024 in Milimani HC. ACECS No. E039 of 2023, leading to the withdrawal of this suit during mention on 10th February 2025. The defendant did not oppose the plaintiff's application for withdrawal of the suit. However, it prayed for costs of the suit.

Submissions

5. Pursuant to the directions of the court, the plaintiff and the defendant filed written submissions dated 12th May 2025 and 23rd April 2025 respectively.



6. The defendant urged the court to award it costs based on Order 25 rule 3 of the Civil Procedure Rules, which states that a defendant may apply for costs of a withdrawn suit. It contended that there is no good reason to depart from the general rule that costs follow the event. It highlighted that a defence was filed in opposition to the suit and documents were filed. It also highlighted that parties have appeared in court on 11 occasions.
7. The defendant further underscored that the plaintiff was aware of parallel forfeiture proceedings and its woes were instigated by the Asset Recovery Agency, yet it saddled the defendant with costs for defending this matter.
8. The defendant relied on: -
 1. Samson K.A. Tim v D.M. Machage [2019] eKLR
 2. Cecilia Karuru Ngayu v Barclays Bank of Kenya & another [2016] KEHC 7064 (KLR)
 3. Jasbir Singh Rai & 3 others v Tarlochan Singh Rai & 4 others [2014] eKLR
9. The plaintiff submitted that in the exercise of its discretion to award costs, the Court must consider not merely the outcome of the proceedings, but also the peculiar circumstances of each case, including the stage at which the suit was discontinued and the events precipitating such withdrawal.
10. The plaintiff urged the court to order each party to bear its cost because of the unique circumstances of this case. It highlighted that it filed the suit without the knowledge of the notice from the Asset Recovery Agency and the order of the Anti-Corruption Court. It also highlighted that the matter did not proceed to hearing; that at the first mention, the court directed that the matter be stood over generally pending the outcome of the proceedings before the Anti-Corruption Court. The court also directed that the matter be mentioned periodically to update on the status of the matter before the Anti-Corruption Court.
11. The plaintiff contended that there was no 'event' as the matter came up on only seven occasions, excluding two instances, on 25th March 2024 and 26th June 2024, when the matter was adjourned at the instance of either party. That further, there were no substantive Rulings, Judgments or determinations rendered by the court on the merits of the claim.
12. The plaintiff added that its election to withdraw following the Anti-Corruption Court judgment was responsible and in good faith since the other matter is on appeal.
13. The plaintiff relied on: -
 1. Morgan Air Cargo Limited v Everest Enterprises Limited [2014] KEHC 8693 (KLR)
 2. DGM v EWG [2021] KEHC 2940 (KLR)\
 3. Rufus Njuguna Miringu & Another v Martha Muriithi & 2 Others [2012] KEHC 3314 (KLR)
 4. Justice R. Kuloba (Retired), Judicial Hints on Civil Procedure, 2nd Edition (Law Africa) 2011 at page 94

Analysis and Determination

14. Is the defendant is entitled to costs of the suit following its withdrawal of the suit?



15. Upon the withdrawal of a suit, the defendant may apply for costs. Order 25 Rule 3 of the Civil Procedure Rules
16. Costs of any action, cause or other matter or issue shall follow the event unless the court shall for good reason otherwise order. Section 27 of the [Civil Procedure Act](#)
17. “In exercising this discretion, courts must not only look at the outcome of the suit but also the circumstances of each case.” DGM v EWG [supra]
18. Some of the parameters considered were captured by the court in Morgan Air Cargo Limited v Evrest Enterprises Limited [2014] eKLR, as follows: -
 - “ a. the conduct of the parties
 - b. the subject of litigation
 - c. the circumstances which led to the institution of the proceedings
 - d. the events which eventually led to their termination
 - e. the stage at which the proceedings were terminated
 - f. the manner in which they were terminated
 - g. the relationship between the parties and
 - h. The need to promote reconciliation amongst the disputing parties pursuant to Article 159 (2) (c) of the [Constitution](#).”
19. The circumstances of this suit are that the plaintiff filed the suit seeking damages for alleged wrongful freezing of its account. The plaintiff’s claim was that the defendant had suspended and frozen transactions on its account without tendering any meaningful explanation.
20. The defendant claimed that it was wrongfully sued as the accounts were frozen pursuant to a notice from the Asset Recovery Agency and orders of the Anti-Corruption and Economic Crimes Court. That it could not disclose details of the freeze because it would be an offense under section 8 of the Proceeds of Crime and Money Laundering Act.
21. On the other hand, the plaintiff submitted that it had no prior knowledge of the notice from the Asset Recovery Agency and court order. That the defendant merely notified it on 26th August, 2023 that it was acting on the basis of a Court Order from the Anti-Corruption Court in Milimani, Nairobi. Neither the Order nor details of the suit in which it was issued were shared until the defendant produced it as an annexure in its response filed on 31st August, 2023 - the very day when its application was scheduled for inter-partes hearing.
22. The record shows that the plaintiff filed the plaint dated 28th August 2023. It contemporaneously filed the notice of motion of even date seeking lifting of the suspension of the account. The defendant filed the memorandum of appearance dated 30th August 2023 and a replying affidavit on 31st August 2023.
23. The inter partes hearing was slated for 31st August 2023. The court directed the plaintiff to file a further affidavit and that parties file and exchange skeletal submissions before then.
24. On 4th September 2023, the court stated that since there is no appeal challenging the order made by the chief magistrate court, it was premature for the court to deal with the application. It directed the



applicant to join the anti-corruption court case and seek the setting aside of that order before it can appeal or challenge that order as the law provided.

25. From the foregoing, there were no substantive Rulings, Judgments or determinations rendered by the Court on the merits of the claim.
26. Nonetheless, even though the matter was withdrawn before it was set down for hearing, the plaintiff did not withdraw the suit immediately it learnt that the freezing of the account was pursuant to a court order under the Anti-money Laundering regime. It was the duty of the plaintiff to act swiftly and end the unnecessary litigation in these proceedings. They did not.
27. Therefore, as the defendant instructed their advocate to enter appearance and filed a replying affidavit, and also attended court on numerous occasions, the defendant expended time and resources on this matter and is entitled to the costs. See *Pacis Insurance Company Ltd v Francis Njeru Njoka* [2018] eKLR
28. Consequently, I order that the plaintiff pays the defendant's costs of this suit to be agreed or taxed by the Deputy Registrar. But, given the circumstances of the case, costs be on the lower scale.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 18TH DAY OF SEPTEMBER, 2025 THROUGH TEAMS ONLINE APPLICATION.

F. GIKONYO M

JUDGE

In the presence of: -

Ms. Chihari for Ms. Ogema for Plaintiff

Kiplagat for defendant

CA - Kinyua

