



**Wangwe v Equator Bottlers Limited & another (Miscellaneous Civil Application
E072 of 2021) [2024] KEHC 1263 (KLR) (5 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1263 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
MISCELLANEOUS CIVIL APPLICATION E072 OF 2021
PJO OTIENO, J
FEBRUARY 5, 2024**

BETWEEN

PHYLLIS WANGWE APPLICANT

AND

EQUATOR BOTTTLERS LIMITED 1ST RESPONDENT

**STANLEY KEGODE SUGUVI T/A KIRINDA DISTRIBUTORS 2ND
RESPONDENT**

RULING

1. Two applications were scheduled for hearing before the Court. They were dated 19.9.2023 and 9.10.2023 respectively. In essence both seek in the main, besides the interlocutory orders of stay, an order that the Court clarifies and or interprets the effect of orders of 27.5.2022 by which the court ordered that the costs of the application dated 11.6.2021 shall go to the Respondent. The former application however seeks outrightly that the Court sets aside the orders of 27.5.2022 in so far as the same regards costs.
2. The gravamen of the application is that being as an arbitrator, she was not a party to the dispute and ought not to be burdened with costs.
3. That assertion calls for the analysis and understanding of what orders were sought in the Notice of Motion dated 11.6.2021. That Motion had four substantive prayers as follows:-
 - 1) Spent
 - 2) That the Honourable Court be pleased to set aside the interim award issued on 28th May, 2021 that sought to affirm the appointment of the 2nd Respondent as a sole arbitrator, uphold the Applicant's challenge and remove the 2nd Respondent as the sole arbitrator.



- 3) That pending the hearing and determination of this application, this Honourable Court be pleased to stay the proceedings of the arbitral tribunal in light of the 2nd Respondent's ruling and directions on 28th May, 2021.
- 4) That the 2nd Respondent furnishes the Applicant with a certified copy of the interim award dated 28th May, 2021 and certified copies of typed proceedings.
- 5) That the Honourable Court does find the 2nd Respondent's actions or inaction as expressed in this Application contravenes Sections 19 and 19A of the Arbitration Act, 1995.
4. Prayer (5) clearly puts the 2nd Respondent (now Applicant) as a party against whom orders were sought.
5. Whether or not the Application was to be and is obligated to pay costs is determinable by the principle of law that costs follow the events. Put the other way round, did the Respondent obtain what it sought from the Applicant so as to be entitled to costs?
6. By the Ruling of 27.5.2023, the court allowed the application and determined that the Applicant was not properly appointed the sole arbitrator. No wrongdoing was determined against her in the nature of contravention of section 19 and 19A of the Arbitration Act as sought in the application.
7. That being the position, the Court finds that while the Respondent was indeed a party to the dispute, by dint of prayer (5) of the Motion, that prayer was never granted and in terms of section 7, explanation 5, of the Civil Procedure Act the prayer is deemed to have been dismissed. When dismissed, the initial Applicant failed in his pursuit against the current Applicant.
8. In such cases, it takes the Court to record reasons for awarding costs against such a successful party. It takes more cogent reason to obligate such a party to pay costs.
9. In the context of this matter and its current status, the Court finds that it would be unjust to burden the Applicant with costs and the Court thus interprets the Ruling of 27.5.2021 to have the effect that the costs are due to be recovered from the 2nd Respondent only as the person against whom the Ruling found against. It is thus determined that the costs awarded by the Ruling of 27.5.2021 are due and recoverable from Stanley Kegode Suguvi t/a Kirinda Distributors.
10. No orders as to costs of the application dated 19/9/2023 and 9/10/2023.

DATED, SIGNED AND DELIVERED AT KAKAMEGA, THIS 5TH DAY OF FEBRUARY, 2024.

PATRICK J. O. OTIENO

JUDGE

In the presence of:

Ms. Nasimiyu for the Arbitrator/Applicant

Mr. Wathuta for Equator Bottlers/1st Respondent

No appearance for the 2nd Respondent

Court Assistant: Polycap Mukabwa

