



Music Copyright Society of Kenya Limited v Karisa & 27 others (Civil Case E158 of 2024) [2024] KEHC 14340 (KLR) (19 November 2024) (Ruling)

Neutral citation: [2024] KEHC 14340 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL CASE E158 OF 2024
JM OMIDO, J
NOVEMBER 19, 2024**

BETWEEN

MUSIC COPYRIGHT SOCIETY OF KENYA LIMITED PLAINTIFF

AND

PETER SIKU KARISA & 27 OTHERS & 27 OTHERS & 27 OTHERS & 27 OTHERS & 27 OTHERS & 27 OTHERS & 27 OTHERS DEFENDANT

RULING

1. The suit herein was withdrawn vide a Notice of Withdrawal of Suit dated 20th August, 2024. The only outstanding issue is that of costs.
2. What is not disputed is that the Defendants were not served with the pleadings in the matter and did not file (a) defence(s) to the suit. It remains unclear how the Defendants became aware of the existence of the suit as they proceeded to file a Replying Affidavit to the Plaintiff's application dated 14th August, 2024 that was filed contemporaneous with the suit.
3. The Plaintiff stated that upon realizing that the plaint had been erroneously filed in the wrong court, it opted not to serve the Defendants and instead took the path of withdrawing the suit. I note that the Notice of Withdrawal of Suit was filed before the Replying Affidavit was filed.
4. The Defendants now take the position that they are entitled to costs upon withdrawal of the suit as they responded to the application. The Plaintiff urges that costs should not be awarded to the Defendants as service of the pleadings and the application to which they responded was not effected.
5. The single issue for determination is therefore whether the defendants are entitled to costs in the circumstances.
6. Under Section 27 of the *Civil Procedure Act*, costs are awarded at the discretion of the court and would ordinarily be awarded to the successful party, unless the court for good reason otherwise orders.



7. The foregoing facts as brought forth by the case – that service of pleadings was not effected upon the Defendants; and that the Notice of Withdrawal of the Suit was filed before the Defendants filed a replying affidavit – in my view present grounds upon which I should not order that the Plaintiffs bear the costs of the suit. I say so because having filed the Notice of Withdrawal of Suit, what was left in the matter was for the court to endorse the withdrawal and the Defendants’ presence or action was not necessary.
8. In any event, as the Defendants had not been served with the pleadings and the application to which a response was filed, they were under no obligation or duty to respond to the same.
9. Being of the foregoing views, I hereby hold that the withdrawal of the suit shall be with no order as to costs.
10. Orders accordingly.

JOE M. OMIDO

JUDGE.

DELIVERED (VIRTUALLY), DATED AND SIGNED THIS 19TH DAY OF NOVEMBER, 2024.

For the Plaintiff: Mr. Musyoka for Mr. Okubasu.

For the Defendants: Mr. Musyoki.

Court Assistant: Ms. Njoroge.

