



Maersk Kenya Limited v Nirav Agencies Limited (Miscellaneous Application E127 of 2021) [2021] KEHC 2 (KLR) (Commercial and Tax) (2 September 2021) (Ruling)

Neutral citation: [2021] KEHC 2 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E127 OF 2021
A MABEYA, J
SEPTEMBER 2, 2021**

BETWEEN

MAERSK KENYA LIMITED APPLICANT

AND

NIRAV AGENCIES LIMITED RESPONDENT

RULING

1. On 13/4/2021, the parties appeared virtually and informed the Court that there was no need to proceed with the applicant's application dated 22/2/2021. The reason being that the goods the subject of the application had been released to the respondent and the matter should be marked as settled.
2. As a result, the respondent prayed for the costs of the application which the applicant opposed. In this regard, the Court directed the parties to file and serve their respective submissions on costs.
3. The applicable provision herein is section 27 of the *Civil Procedure Act* which provides for costs. Costs is in the discretion of the Court and always follows the event.
4. The respondent submitted that it is a well settled principle that costs follow the event. This means that the successful party is entitled to costs unless the court for sufficient reason orders otherwise. That it participated in these proceedings upon being served with the applicant's application dated 22/2/2021. That by then, the goods the subject of the application had been released.
5. It further submitted that having participated in the proceedings and being the successful party, it was entitled to the costs. Reliance was placed on the case of *Pacis Insurance Company Ltd v Francis Njeru Njoka* wherein it was stated that: -

“ A party having been caused by the other to participate in a suit, is entitled to costs incurred in the event the party instituting the suit decides to withdraw it unless parties agree otherwise



or Court on exercising its discretion decide otherwise after giving the parties opportunity to submit on costs.

In the instant case, the suit was withdrawn after hearing date was set. Defendant had engaged an Advocate to defend the suit. Defendant is therefore expected to have incurred expenses and is entitled to costs expended.”

6. For the applicant, it was submitted that the proceedings that began in the subordinate court were instituted by the respondent vide an application filed on 4/11/2020. By that time, the applicant had already released the goods to the respondent. That in the premises, there was no need to have filed the application that gave rise to the impugned ruling. It was therefore submitted that each party do bear own costs.
7. I have considered the submissions on record. It is clear that by the time the application in the lower court was being filed, the goods the subject of the suit had already been released by the applicant to the respondent. In this regard, the applications both in the lower and this Court were unwarranted.
8. In *Morgan Air Cargo Limited v Everest Enterprises Limited* , it was held: -

“The Court takes the view that awarding costs is a matter of the discretion of the Court. It is not a matter of course. The exercise of the discretion, however, depends on the circumstances of each case. Therefore, the law in designing the legal phrase that “Cost follow the event” was driven by the fact that there could be no “one-size-fit-all” situation on the matter. That is why section 27(1) of the *Civil Procedure Act* is couched the way it appears in the statute; and even all literary works and judicial decisions on costs have recognized this fact and were guided by and decided on the facts of the case respectively.”
9. In the present case, the peculiar circumstances are that, both the applications in the lower and this Court were unwarranted. Both parties engaged in expense opposing the same. I hold the view that each party should in the circumstances bear own costs. This seems to have been an unnecessary litigation.

It is so ordered.

DATED and **DELIVERED** at Nairobi this 2nd day of September, 2021.

A. MABEYA, FCIarb

JUDGE

