



REPUBLIC OF KENYA

IN THE HIGH OF KENYA

AT MERU

CIVIL APPEAL NO. 29 OF 2015

JOSEPH KOBIA NGUTHARI.....PLAINTIFF/RESPONDENT

VERSUS

KIEGOI TEA FACTORY COMPANY LIMITED.....1ST DEFENDANT/APPLICANT

KTDA MANAGEMENT SERVICES LIMITED.....2ND DEFENDANT/APPLICANT

KTDA HOLDING LIMITED.....3RD DEFENDANT/APPLICANT

RULING

1. This matter was marked as settled on 13/5/2019 at the request of the respondent's counsel on the basis that it had been overtaken by events. The said counsel proceeded to request for costs of the suit, which request the court gladly acceded to. That did not sit very well with the applicants, who filed an application under certificate of urgency dated 12/2/2020 which was heard and allowed by the ruling dated 15/02/2021 with directions that parties attend the court and make addresses on whether there still exists a need to pursue the matter and what orders deserve being made regarding costs. The two counsel attended court on a14/07/2021 and made submissions.

2. In her submissions, counsel for the defendant asked the court to mark the matter as settled with no orders as to costs because nothing remained for the court to determine. On the assertion that the plaintiff had been vindicated by the ruling and thus succeeded and entitled to costs in the event of that success, counsel submitted that the subject ruling was not a success but a compromise by which the scheduled elections were suspended and fresh ones called. Counsel stressed the order by the court that there be no orders as to costs.

3. On the other hand, counsel for the plaintiff urged the court to award it the costs of the suit because it had agreed to abandon the suit on conditions that it is paid costs because it had come to court seeking the right to vote which it obtained by the ruling of the court dated 22/09/2016 to the plaintiff, the ruling vindicated him and thus he asserts the right to get costs. It was however graciously conceded that no meaningful purpose would be served by seeking to hear the matter as no prayers in the suit are capable of being granted.

4. I do find that where both sides to a dispute agree that no benefit would be derived by continuing with the matter, the court cannot infer a dispute and insist on the matter proceeding. The litigation must remain a dispute between the parties and when both say it has ceased the court must declare so. I thus say the dispute has been overtaken by events and the court must now bring the file to a closure.

5. That closure however, must take cognizance that the court has a duty to pronounce itself on costs. That is a mandate I shall execute by posing the question the plaintiff is entitled to costs of the suit agreed to have been taken by events.

6. The general rule coded under Section 27 of the Civil Procedure Act as interpreted by the courts is that costs follow the event. It is also trite that the award of costs is at the discretion of the court. That discretion, like any other must be exercised judicially and in favor of a party who was successful. When the statute says, costs follow the events, it means that the successful party gets the costs paid by the unsuccessful one. see **Fredrick Nyamweya Nyangweso v Desh Moraa & Another (2004) eKLR** where the court observed that:-

“...it is true that according to S. 27 CPA costs follow the event. The same section however also provides that costs will be at the discretion of the Court which means that though costs follow the event the Court has to make an order for costs. The Court did not make any order for costs when it made the withdrawal order. It was therefore left to the Respondent to request the Court to make an order for costs.”

7. Put in the context of this matter, it cannot be in dispute that the suit was instituted by the plaintiff seeking specific orders which are now said to be incapable of grant. That the plaintiff succeeded in the application must be viewed in the light of the order by the court in the same decision that none of the parties get costs thereof. Subsequent to that decision, parties came to the realization that the matter was done with.

In those circumstances, the plaintiff agreeing that the matter is compromised and intending not to proceed is tacitly saying that he is terminating the proceedings or withdrawing same. When a party withdraws a suit, it exposes itself to pay costs. Here it is the reverse that the party abandoning his claim is the same asking for costs. I find that unusual and not merited. I order that the suit be marked compromised by the orders of 22/09/2016 and that there be no orders as to costs.

8. Accordingly, let this file be closed and so marked in the records of the court.

DATED, SIGNED AND DELIVERED AT MERU VIRTUALLY BY MS TEAMS THIS 4TH DAY OF OCTOBER, 2021

Patrick J.O Otieno

Judge

In presence of

Miss Mutinda for the defendant

No appearance for Ngunjiri for the plaintiff

Patrick J.O Otieno

Judge