



**Khamisi v Institution of Engineers of Kenya (Employment and Labour Relations Cause E179 of 2023) [2024] KEELRC 1186 (KLR) (17 May 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1186 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS CAUSE E179 OF 2023**

**AN MWAURE, J**

**MAY 17, 2024**

**BETWEEN**

**ENG BUTICHI RAMADHANI KHAMISI ..... PETITIONER**

**AND**

**THE INSTITUTION OF ENGINEERS OF KENYA ..... RESPONDENT**

**RULING**

1. On the 2<sup>nd</sup> day of May 2024 the petitioner/applicant made an oral application to withdraw the petition dated 21<sup>st</sup> September 2023 with no orders as to costs submitting this is a public litigation application and each party ought to bear their respective costs.
2. The respondents and the interested party whereas they had no objection to the withdrawal of the petition but however they all insisted on being paid their costs as they said they merited to be paid their costs.
3. The petitioner withdrew his petition when the 5<sup>th</sup> respondent resigned from his position of the CEO. The parties had all worked hard and had filed their relevant pleadings and submissions for both the notice of motion and the petition.
4. Having said so the suit was brought on behalf of the wider Engineer's fraternity and is clearly a public litigation case.
5. Persuaded by the case of *Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others* the judge explained that public interest litigation plays a transformative role in the society. It allows various issues affecting the various spheres of society to be presented for litigation in instances where claims in the interest of the public are administrative action to the determination of constitutional interpretation and application the court has discretion on a case by case basis to evaluate the terms of public nature of the matter vis a vis the status of the parties before it.



6. Again in the case of *South Africa Biowatch Trust v Registrar Genetic Resources & others* CCT 80/08 (2009) the court held “ equal protection under the law requires that costs awards not dependent on whether the parties are acting in their own interests or in the public interest nor should they be determined by whether the parties are financially well endowed or indigent. The primary consideration is constitutional litigation must be the way in which a costs order would hinder or promote the advancement of constitutional justice.”
7. The court agrees that since this is a public litigation suit it is fair and prudent that each party bears their costs of the suit.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 17TH DAY OF MAY, 2024.**

**ANNA NGIBUINI MWAURE**

**JUDGE**

**ORDER**

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of the Constitution which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

**ANNA NGIBUINI MWAURE**

**JUDGE**

