



**Universities Academic Staff Union, Egerton University Branch/Chapter v Egerton University & 2 others; Universities Academic Staff Union (Interested Party) (Employment and Labour Relations Cause E024 of 2023) [2024] KEELRC 1864 (KLR) (16 July 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1864 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU  
EMPLOYMENT AND LABOUR RELATIONS CAUSE E024 OF 2023**

**HS WASILWA, J  
JULY 16, 2024**

**BETWEEN**

**UNIVERSITIES ACADEMIC STAFF UNION, EGERTON UNIVERSITY  
BRANCH/CHAPTER ..... CLAIMANT**

**AND**

**EGERTON UNIVERSITY ..... 1<sup>ST</sup> RESPONDENT**

**THE COUNCIL, EGERTON UNIVERSITY ..... 2<sup>ND</sup> RESPONDENT**

**THE VICE CHANCELLOR, EGERTON UNIVERSITY ..... 3<sup>RD</sup> RESPONDENT**

**AND**

**UNIVERSITIES ACADEMIC STAFF UNION ..... INTERESTED PARTY**

**RULING**

1. This suit was commenced by a Memorandum of claim dated 15<sup>th</sup> May, 2023, seeking interalia for this Court to compel the Respondents to pay the Union a sum of Kshs 17,411,419.06 being unremitted union dues and agency fees.
2. That the Responded entered appearance and parties resolved to discuss the issues out of Court and on 30<sup>th</sup> May, 2024, they recorded a consent for the payment of Kshs 14,771,331.85 being dues accumulated from March, 2021 to June, 2023. The parties however, did not agree on costs and the court directed for the issue of costs to be canvassed by written submissions.

**Claimant’s Submissions**

3. The Claimant submitted that the genesis of this matter arose when the Respondents herein sometime in March, 2021 stopped remitting the union dues and agency fees after deducting from its members,



necessitating the filling of this suit. It is argued that, it was only after filling this suit, that the Respondents realized they had no defence and began remitting the arrears and sought to settle the matter out of Court, leading to the consent entered on 30<sup>th</sup> May, 2024, where the Respondents conceded to the Claimant's claim requiring them to pay the arrears which at the time has accumulated to Kshs. 14,771,331.85/=.

4. It was argued that the Claimant herein was the successful party to these proceedings and hence, it is entitled to costs in line with Section 27 of the Civil Procedure Act, Section 44 of the Advocates Act and the Advocates (Remuneration) Order, 2014 and plethora of case law which have elaborated on principles that guide courts in awarding costs.
5. It was submitted that the claimant and the interested have on several instances wrote to the Respondent demanding for the said Union dues and agency fees but that their request fell in deaf ears. It was also argued that it is not in dispute that the Claimant herein has already incurred costs since it was forced to hire an advocate to institute this suit and to finally ensure that the Respondents were stopped from their continued acts of illegality.
6. To support their quest for costs, the claimant relied on the case of *Orix Oil Limited V Paul Kabeu* [2014] Eklr, where the court stated:-

“...costs follow the event, and the Plaintiff being the successful party should ordinarily be awarded costs unless its conduct is such that it would be denied the costs or the successful issue was not attracting costs. None of those deviant factors are present in this case and the court would still have awarded costs to the Plaintiff, which I do”

7. The Claimant also relied on the case of *Party of Independent Candidate of Kenya vs Mutula Kilonzo & 2 Other*, where the Learned Judge on costs held as follows:

“...it is clear from the authorities that the fundamental principle underlying the award of costs is two-fold. In the first place the award of costs is a matter in which the trial judge is given discretion...But this is a judicial discretion and must be exercised upon grounds on which a reasonable man could come to the conclusion arrived at. In the second place the general rule that costs should be awarded to the successful party is a rule that should not be departed from without the exercise of good grounds of doing so.”

8. Also, in the case of *Gladys Mukwalu Marangu & Another V Emilio Marangu M'ndiri & Another* [2008] Eklr, where the Court on the issue of costs held as follows:-

“In this case as shown from the chronology of events it cannot be said that the 2nd Defendant has conducted himself in any manner whatsoever to deprive himself of the costs of this suit. There is no evidence of conduct on the part of the Second Defendant which led to the litigation which could have been averted but for such conduct either prior to or during the course of the action. Having led the Second Defendant through the garden path for close to 17 years and over, and on the eve of the hearing after that period decided to withdraw the suit, the Plaintiffs are in my judgment, liable to the second Defendant and who in turn is entitled to costs not merely under Order XXIV \_ rule 2 (2) &(3) of the Civil Procedure Rules but also under the provisions of Section 27 of the Civil Procedure Act Cap 21 Laws of Kenya..... using the Plaintiffs from payments of costs, the costs must follow the event as prescribed in the proviso to section 27 of the Civil Procedure Act. Counsel for the 2nd Defendant have also sought in their submissions and for the same reasons that the Court do exercise its discretion under Section 27 2 of the Civil Procedure Act and award interest on



costs. I think that under the circumstances of this case and on the same grounds that unless the Defendant has misconducted himself and which misconduct has led to the litigation which would otherwise have been avoided this suit has laden upon the 2nd Defendant for 17 years and over and all due to the Plaintiffs' failure to either prosecute the same or withdraw it at the early stages."

9. Lastly in *Joseph Gachagua & another v Alice C. Kalya & 4 others* [2015] eKLR where the Learned Judge relied on the case of *R. Vs SPM Mombasa & Others Exparte Nicholas Katumo Peter Mombasa Misc. CA CJR 65/2013*, which held that:

"The court must consider that litigation, as with other legal business, is costly in terms of time, Money inconveniences and the opportunity cost while attending to the court matter and a party who by conduct causes another to seek relief in court or who seeks court's intervention upon grounds that the court ultimately dismisses as unmeritorious must be read to meet the costs incurred by the other party in seeking the court's intervention or in defending himself or protecting his interests in the subject matter. The successful party is entitled to the costs in accordance with the principle that costs follow the event. The law as set out in Section 27 of the [Civil Procedure Act](#) requires good reasons for departing from the said principle."

10. Arising from the foregoing, the claimant submitted that it is crystal clear that the Claimant herein is entitled to an award of costs together with interest. He beseeched this Court to award it costs together with interest and so that it is reimbursed for the costs it has already incurred in instituting this matter.

### **Respondent's Submissions**

11. The Respondent submitted on the other hand that it is trite law that the usual position in all suits is that costs shall follow the event and an order as to costs is at the discretion of the Court. Section 27 of the [Civil Procedure Act](#) provides as follows: -

"27 (1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and give all the necessary directions for the purposes aforesaid; and the fact that the court has no jurisdiction to try the suit shall be no bar to the exercise of those powers; provided that the costs of any action, cause or other matter or issue Shall follow the event unless the court or judge shall for good reason otherwise direct."

12. It was submitted that discretion is exercised when it comes to matters of costs as was held in *Republic vs Rosemary Wairimu Munene, Ex-Parte Applicant Vs Ihururu Dairy Farmers Co-operative Society Ltd* Judicial Review application no 6 of 2014( Ur) the Court observed as follows;

"The issue of costs is the discretion of the court as provided under the above section. The basic rule on

attribution of costs is that costs follow the event... It is well recognized that the principle costs follow the event is not to be used to penalize the losing party; rather it is for compensating the successful party for the trouble taken in prosecuting or defending the case."



13. It was submitted that as much as costs follow event, the Court can fail to grant costs to a successful party for some good reason and based on the grounds enumerated in the case of Cecilia Karuru Ngayu Vs Barclays Bank of Kenya & another [2016] eKLR the court opined as follows:
- “To my mind, in determining the issue of costs, the court is entitled to look at inter alia (i) the conduct of the parties, (ii) the subject of litigation, (iii) the circumstances which led to the institution of the proceedings, (iv) the events which eventually led to their termination, (v) the stage at which the proceedings were terminated, (vi) the manner in which they were terminated, (vii) the relationship between the parties and (viii) the need to promote reconciliation amongst the disputing parties pursuant to Article 159 (2) (c) of *the Constitution*. In other words the court may not only consider the conduct of the party in the actual litigation but the matters which led to the litigation, the eventual determination thereof and the likely consequences of the order or costs.”
14. Accordingly, that in this case, the members of the Claimant and some members of the Interested Party are employees of the 1<sup>st</sup> Respondent. It is common ground that there has been a lot of litigation between the parties herein which succeeded for different parties in different cases and the court has never awarded costs to any party. Furthermore, that it is in public domain, which this Court should take judicial notice that the 1<sup>st</sup> Respondent’s financial situation had worsened, resulting in accumulated debts in excess of Kshs, 60 billion. This includes a garnishee order attaching all accounts of the 1<sup>st</sup> Respondent for a recovery of a sum of Kshs. 116,259,925.81 in Milimani Law Courts Case No. HCCOMMARB/E003/2023 Diaspora Build Ltd –Vs-Egerton University. Therefore, that If the Court were to order that the Respondents do bear the costs of the Suit it will place further financial hardship on their part further exacerbating the 1<sup>st</sup> Respondent’s financial situation.
15. It was argued in Addition, that since the institution of this claim, the parties have conducted themselves reasonably and the litigation does not stem from malicious or unreasonable behavior but rather from factors which are beyond the Respondents control. In any event, that in entering into the consent, the Respondent has shown good faith and in the bid to find a long lasting solution to the dispute.
16. On that basis, the Respondent urged this Court to take cognizant of the special and amiable relationship between the parties and direct each party to bear their own costs.
17. I have considered the submissions of the parties herein. It is indeed true that the costs follow the event but it is also true as per section 27 (1) of the *Civil Procedure Act* that costs are at the discretion of the Judge depending on the circumstances of the case.
18. In the current case, it is true that the parties resolved this case by consent following on amicable settlement of the dues pending. In determining costs payable this court also considers the conduct of the parties and in this case the conduct of the Respondents who amicably conceded to owing the Claimant and made good by paying what was owed accordingly.
19. The Respondents in this case conducted themselves responsibly and in good faith and finalized this case within reasonable time.
20. In view of this conduct by the Respondents, I exercise my discretion and order that there will be no order of costs.

**RULING DELIVERED VIRTUALLY THIS 16<sup>TH</sup> DAY OF JULY, 2024.**

**HON. LADY JUSTICE HELLEN WASILWA**



## **JUDGE**

In the presence of: -

Karanja for Claimant Present

Bosibori holding brief Ndubi and Konosi for Respondent – Present

Court Assistant - Fred

