



**Wambugu v Ngumi; Space and Style Limited (Nominal Respondent) (Commercial Petition E003 of 2019) [2025] KEHC 14171 (KLR) (Commercial and Tax) (9 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14171 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL PETITION E003 OF 2019**

**AA VISRAM, J**

**OCTOBER 9, 2025**

**BETWEEN**

**NJAMA WAMBUGU ..... PETITIONER**

**AND**

**WINFRIDA WANJIKU NGUMI ..... RESPONDENT**

**AND**

**SPACE AND STYLE LIMITED ..... NOMINAL RESPONDENT**

**RULING**

**Background**

1. The Petitioner filed this Petition on 11<sup>th</sup> December, 2019, seeking several declaratory and injunctive orders against the Respondent and the Nominal Respondent (the Company), principally, to restrain any interference with his directorship and shareholding. Contemporaneously, the Petitioner filed a Notice of Motion dated 10<sup>th</sup> December, 2019, under certificate of urgency. Ex parte orders were granted on 16<sup>th</sup> December, 2019, restraining the Respondent from removing him from the Board or altering his shareholding.
2. The Respondent moved the Court through a Notice of Motion dated 19<sup>th</sup> December, 2019, seeking to set aside the ex parte orders, but directions were given for the Petitioner's motion to be heard on priority. The application was heard and dismissed with costs by Lady Justice W.A. Okwany on 29<sup>th</sup> April, 2020. The Petitioner did not appeal that determination.
3. The Petition thereafter lay dormant. Following non-prosecution, the Respondent filed an application dated 21<sup>st</sup> June, 2023, seeking dismissal for want of prosecution. The matter was ultimately marked as settled by consent, leaving only the issue of costs for determination.



## Issue

4. The sole question for determination is whether costs of the Petition should be awarded and, if so, to whom.

## Respondent's Submissions

5. The Respondent's position is that costs should follow the event pursuant to Section 27(1) of the *Civil Procedure Act*, which provides that "costs shall follow the event unless the court shall for good reason otherwise order." Counsel relied on *Joseph Oduor Anode v Kenya Red Cross Society* [2012] eKLR where Odunga J observed that while the court retains discretion, such discretion must be exercised judicially and in accordance with established principles.
6. The Respondent further relied on *Morgan Air Cargo Limited v Everest Enterprises Limited* [2014] KEHC 8693 (KLR), in which Gikonyo J held that settlement by consent does not automatically disentitle a successful party to costs; rather, it is a factor to be considered in the circumstances of each case.
7. It was contended that the Petition was an abuse of the process of the court, being duplicative of prior suits, namely HCCC No. 194 of 2018: *Njama Wambugu v Space and Style Ltd & 5 others*, and subsequent related proceedings. The Petitioner was said to have frustrated the implementation of a term sheet dated 20<sup>th</sup> January, 2018, under which he had agreed to transfer his shares to the Respondent. Further, the Court of Appeal in Civil Application No. 54 of 2019 (19<sup>th</sup> July, 2019) had stayed the High Court's prior orders, but the Petitioner nonetheless instituted this Petition.
8. The Respondent thus urged that costs be awarded to her, noting the considerable resources expended in defending the Petition since 2019.

## Determination

9. The principle that costs follow the event is well settled. The Supreme Court, in *Rai & 3 others v Rai & 4 others* [2014] KESC 31 (KLR) affirmed the principle that costs follow the event. It held as follows:-

"So the basic rule on attribution of costs is: costs follow the event. But it is well recognized that this principle 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 Suit."
10. The Supreme Court in *Rai (supra)* further held that:-

"(18) It emerges that the award of costs would normally be guided by the principle that "costs follow the event": the effect being that the party who calls forth the event by instituting suit, will bear the costs if the suit fails; but if this party shows legitimate occasion, by successful suit, then the defendant or respondent will bear the costs. However, the vital factor in setting the preference is the judiciously-exercised discretion of the Court, accommodating the special circumstances of the case, while being guided by ends of justice. The claims of the public interest will be a relevant factor, in the exercise of such discretion, as will also be the motivations and conduct of the parties, prior-to, during, and subsequent-to the actual process of litigation."



11. The Court of Appeal in *Supermarine Handling Services Ltd v Kenya Revenue Authority* [2010] eKLR held that “although costs are at the discretion of the Court, they should ordinarily follow the event unless the successful party is guilty of conduct that would justify a denial of the same.”
12. The Court must therefore determine:-
  - i. which party can properly be said to have been successful, and
  - ii. whether there exist sufficient reasons to depart from the general rule.
13. The record reflects that the Petitioner’s interlocutory motion was dismissed on 29<sup>th</sup> April, 2020, with costs to the Respondent. The Petition itself was never prosecuted to conclusion and was marked as settled after the Respondent’s application for dismissal. In practical effect, the Petition achieved none of its intended purposes.
14. The Court also notes that Lady Justice Okwany, in her ruling of 17<sup>th</sup> April, 2020, found that the Petition was improperly before court and that it arose from “retaliatory conduct” stemming from the breakdown of relations between the parties. That observation, coupled with the Petitioner’s failure to prosecute the Petition, supports the Respondent’s contention that the suit lacked merit ab initio.
15. Settlement of a matter by consent does not in itself extinguish the right to costs. Each case must be assessed on its own facts. In this instance, the settlement did not alter the substantive outcome — the Petition had already failed at the interlocutory stage, and no further relief was granted to the Petitioner.
16. There is no evidence of misconduct by the Respondent that would justify a departure from the general rule. On the contrary, the record discloses multiple suits and applications filed by the Petitioner over the same dispute, an approach that this Court views as unnecessary and vexatious.

**Conclusion**

17. In the result, and applying Section 27(1) of the *Civil Procedure Act*, the Court finds that the Respondent was the successful party in these proceedings. The Petitioner having failed to prosecute his case, and the dispute having been compromised without any concession in his favour, there is no reason to depart from the general rule that costs follow the event.

**Orders**

1. The Petition is marked as settled.
2. Costs of the Petition are awarded to the Respondent, to be taxed and certified by the Deputy Registrar.

**DATED AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS THIS 9TH DAY OF OCTOBER, 2025**

**ALEEM VISRAM, FCI Arb**

**JUDGE**

In the presence of;

Court Assistant: Lisper

.....for Petitioner

.....for Respondent



.....for Nominal Respondent

