



Musa v Matheka (Civil Case E014 of 2022) [2025] KEMC 73 (KLR) (24 April 2025) (Ruling)

Neutral citation: [2025] KEMC 73 (KLR)

**REPUBLIC OF KENYA
IN THE MAKINDU LAW COURTS
CIVIL CASE E014 OF 2022
YA SHIKANDA, SPM
APRIL 24, 2025**

BETWEEN

JOSEPHINE MWIKALI MUSA PLAINTIFF

AND

IRENE MUNINI MATHEKA DEFENDANT

RULING

THE SUBJECT

1. Judgment herein was delivered on 17/4/2023 in which the plaintiff's suit was dismissed with costs to the defendant. Pursuant to Order 21 rule 8(2) as read with sub-rule (5) of the Civil Procedure Rules, counsel for the defendant prepared and sent a draft decree and certificate of costs to the plaintiff's Advocate for approval. The draft decree and in particular the certificate of costs was rejected by counsel for the plaintiff who sent a counter certificate of costs to the defendant's counsel. The parties could not agree on the costs payable. The matter was then brought to the attention of the court for settlement.

Main Issue for Determination

2. The main issue for determination concerns the costs payable to the defendant by the plaintiff. The decree is not in dispute.

Analysis and Determination

3. I have perused the draft decree and statement of costs filed by the defendant as well as the counter statement of costs filed by the plaintiff. Order 21 rule 9 of the Civil Procedure Rules provides that where the amount of costs has been—
 - (a) agreed between the parties;
 - (b) fixed by the judge or magistrate before the decree is drawn;



- (c) certified by the registrar (Sub. Leg. Cap. 16); or
 - (d) taxed by the court, the amount of costs may be stated in the decree or order.
4. In this case, there is no agreement as to the costs payable and the costs were not fixed by the court. Order 21 rule 9A(1) of the Civil Procedure Rules provides that a party claiming costs at a Magistrates Court shall file a written request, statement of costs and supporting documents with the Court and serve it on the other parties with a breakdown of the costs sought. According to Order 21 rule 9B(2) thereof, once served with the written request, a statement of costs and supporting documents, the Respondent may file a response with the Court within seven days of service. Order 21 rule 9C(3) provides that the Court shall consider the written request, statement of costs and supporting documents filed by the parties within fourteen days of response by the respondent and make appropriate orders as to costs. In awarding costs, the Court shall be guided by the Advocates (Remuneration) Order-see Oder 21 rule 9D (4) of the Civil Procedure Rules.
5. The plaintiff's claim was not liquidated. The plaintiff sought an order of injunction and release of a motor vehicle to her. The suit was filed in 2022. Paragraph 2 of the 7th Schedule to the Advocates Remuneration Order provides that:

“In any suit or appeal by the nature of which no specific sum is sued for, claimed for, or awarded in the judgment (other than proceedings falling under paragraph 3 below); such costs as the court in its discretion but not less than Kshs. 20,000 if undefended or unopposed and (subject to any special order for good reason connected with the nature and importance or the difficulty or the urgency of the matter) not to exceed Kshs. 50,000.”

6. Paragraph 1 thereof provides that the "Lower Scale" shall be applied in all cases where no defence or other denial of liability has been filed and the "Higher Scale" shall be applied in all other cases. The suit herein was defended. It therefore implies that a higher scale shall be applied for party and party costs. The maximum of Ksh. 50,000/= is for an undefended suit. In a suit such as this one, it should be higher. The suit herein was not complex. I therefore award Ksh. 65,000/= as party and party costs. I will award Ksh. 3,000/= as proposed by the decree-holder for the Application. The court fees on suit is Ksh. 4,100/= as proposed by the decree holder. There are receipts on the court file to prove the same. There were 17 attendances in total, including the last attendance on 3/4/2025. Out of the 17 attendances, three (3) were for hearing. The total award for attendances is made up as follows:

- a. Hearings- 2,100 × 3= 6,300/=;
 - b. Mentions- 1,400 × 14= 19,600/=
- Total.....Ksh. 25,900/=.

No evidence was furnished to prove witness expenses. The law requires that supporting documents be furnished. In the absence of supporting documents, I make no award for witness expenses. The award for decree and certificate for costs of Ksh. 500/= is not in dispute. I award the same.

Disposition

7. In summary, the costs payable to the defendant/decree-holder are assessed as follows:
- a. Party to party costs on higher scale.....Ksh. 65,000/=
 - b. Application.....Ksh. 3,000/=
 - c. Court fees on suit.....Ksh. 4,100/=



- d. Court Attendances.....Ksh. 25,900/=
 - e. Decree and certificate of costs.....Ksh. 500/=
- Total.....Ksh. 98,500/=
- Less costs awarded to the plaintiff on 28/11/2022...Ksh. 2,600/=
- Balance due to the Decree-holder.....Ksh. 95,900/=
- A Decree and Certificate of costs to issue to that effect.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MAKINDU THIS 24TH DAY OF APRIL, 2025.

Y.A SHIKANDA

SENIOR PRINCIPAL MAGISTRATE.

HON Y.A. SHIKANDA

