



**Kenya Commercial Bank Limited v Crowada Contractors and General Suppliers Limited
(Civil Appeal E055 of 2024) [2025] KEHC 15967 (KLR) (7 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 15967 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITALE
CIVIL APPEAL E055 OF 2024
PJO OTIENO, J
NOVEMBER 7, 2025**

BETWEEN

KENYA COMMERCIAL BANK LIMITED APPELLANT

AND

**CROWADA CONTRACTORS AND GENERAL SUPPLIERS
LIMITED RESPONDENT**

*(Being an appeal from the Ruling and Order of Hon.M.W.Ghati (RM)
in Kitale CMCC No. E220 of 2014 delivered on 12th September, 2024)*

JUDGMENT

Background of the Appeal

1. By a plaint dated 12th June 2024, the respondent instituted a suit against the appellant seeking, inter alia, a permanent injunction restraining the appellant from attaching or offering for sale, whether by public auction or private treaty, any of the named respondent's suit property. The respondent further sought an injunction restraining the appellant from clogging its right of redemption, together with costs of the suit and interest at court rates.
2. In its statement of defense dated 19th June 2024, the appellant averred that it had entered into an asset finance facility agreement with the respondent for the purchase of motor vehicle registration number KCD 764T, Mitsubishi FJC3 Tipper, under which the respondent undertook to repay the facility within forty-eight (48) months. The appellant contended that the respondent defaulted in meeting its loan obligations, thereby necessitating the repossession of the motor vehicle, which it asserted was conducted procedurally. The appellant further maintained that the trial court lacked jurisdiction to entertain the suit.
3. Subsequently, the appellant filed a notice of preliminary objection, contending that the suit was incompetent and fatally defective, having been instituted through unprocedural means and in



contravention of Sections 11, 12, and 15 of the Civil Procedure Act. It was further contended that the suit offended the principle of territorial jurisdiction.

4. In a ruling delivered on 12th September 2024, the trial magistrate struck out the suit with no order as to costs, holding that the dispute between the parties arose from a contractual arrangement for the financing of the subject motor vehicle, and was therefore subject to Section 15 of the Civil Procedure Act. The learned magistrate found that the contract giving rise to the cause of action was executed in Webuye, and that since both parties had offices in Webuye, the competent court to determine the dispute was the Webuye court.
5. Aggrieved by the decision, the appellant filed a memorandum of appeal dated 13th September 2024, seeking to have the ruling of the learned magistrate set aside in part on the issue of costs and to have the same substituted with an order awarding the appellant costs and interest of the suit. The appeal is premised on some three ground which are in reality just amount to one; whether there was a reason to deny a successful litigant the costs of the suit.
6. Even though the appeal was directed to be canvassed by way of submissions, as at the time of writing judgment, only the appellant had filed its submissions.
7. In the submissions the appellant submits that, having succeeded in its preliminary objection, it was entitled to costs in accordance with the general principle that costs follow the event. To the appellant Section 27 of the Civil Procedure Act, guarantees costs to the successful party, unless the court, for good reason to be recorded, directs otherwise. It contends that the trial court did not provide any reasons for departing from this settled principle, hence the present appeal.
8. The appellant argues that what constitutes “good reason” to justify a departure from the general rule varies from case to case. In support of this position, the appellant relies on the decision of the Supreme Court of Kenya in *Jasbir Singh Rai & Others v Tarlochan Singh Rai & Others* [2014] eKLR, where the court held:

“In the classic common law style, the courts have to proceed on a case-by-case basis to identify ‘good reasons’ for such a departure. An examination of evolving practices on this question shows that, as an example, matters in the domain of public interest litigation tend to be exempted from award of costs...”
9. The appellant also refers to the writings of Justice (Rtd) Richard Kuloba in his book *Judicial Hints on Civil Procedure*, 2nd Edition (Nairobi: Law Africa, 2011), at page 94, where the author observes:

“Costs are awarded at the unfettered discretion of the court, subject to such conditions and limitations as may be prescribed and to the provisions of any law for the time being in force, but they must follow the event unless the court has good reason to order otherwise.”
10. In conclusion, the appellant urges this court to allow the appeal with costs, and to set aside the portion of the trial court’s ruling that denied the appellant costs of the suit.

Issues and Analysis for Determination

11. The Court has carefully considered the pleadings, the ruling of the trial court, the memorandum of appeal, and the submissions filed by the appellant. From that review, the sole issue that arises for determination is whether the learned trial magistrate erred in failing to award costs to the appellant upon upholding its preliminary objection, contrary to the general principle that costs follow the event.



12. The general principle governing the award of costs is well settled in law under Section 27(1) of the *Civil Procedure Act* which has attracted innumerable decisions from the superior courts of Kenya.
13. The general principle is that, while the award of costs is a matter within the discretion of the court, that discretion must be exercised judicially and not capriciously. The general rule remains that costs follow the event, meaning that the successful party is entitled to costs unless there exists a good reason to depart from that principle.
14. The Supreme Court of Kenya in *Rai & 3 others v Rai & 4 others* (Petition 4 of 2012) [2014] KESC 31 (KLR), expounded this principle as follows:

“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.”
15. The Court further observed that good reasons for such departure are to be determined on a case-by-case basis, and examples include matters involving public interest litigation, family disputes, or situations where awarding costs would hinder access to justice or where the successful party precipitated an application, say for setting aside by failing to attend court when duly notified.
16. Similarly, in *Republic v Rosemary Wairimu Munene, Ex parte Applicant v Ihururu Dairy Farmers Co-operative Society Ltd* [2014] eKLR, the Court held that:

“The basic rule on attribution of costs is that costs follow the event..... It is well recognized principle that 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”.
17. In the present case, the record is clear that the appellant’s preliminary objection was upheld for being meritorious and the suit was thus struck out for want of jurisdiction. Having successfully challenged the competence of the suit, the appellant was the successful party within the meaning of Section 27(1) of the *Civil Procedure Act*. The trial magistrate, therefore, ought to have awarded costs to the appellant unless there was a clearly stated “good reason” for departing from the general rule.
18. The ruling of the trial court merely indicates that the suit was struck out “with no order as to costs” without any explanation or justification for the denial of costs. The omission to give reasons rendered the exercise of discretion arbitrary and contrary to the settled principles governing costs.
19. In *Supermarine Handling Services Ltd v Kenya Revenue Authority Civil Appeal No. 85 of 2006* [2010] eKLR, the Court of Appeal emphasized that judicial discretion must be exercised on sound legal and factual basis. The court held as follows: -

“Costs of any action or other matter or issue shall follow the event unless the court or Judge shall for good reason otherwise order. It is well established that when the decision of such a matter as the right of a successful litigant to recover his costs is left to the discretion of the Judge who tried his case, that discretion is a judicial discretion, and if it be so its exercise must be based on facts. If, however, there be, in fact, some grounds to support the exercise by the trial Judge of the discretion he purports to exercise, the question of sufficiency of those grounds for this purpose is entirely a matter for the Judge himself to decide, and the Court of Appeal will not interfere with his discretion in that instance... Thus, where a trial



court has exercised its discretion on costs, an appellate court should not interfere unless the discretion has been exercised unjudicially or on wrong principles. Where it gives no reason for its decision the Appellate Court will interfere if it is satisfied that the order is wrong. It will also interfere where the reasons are given if it considers that those reasons do not constitute “good reason” within the meaning of the rule ... In the instant case the learned Judge gave no reasons whatsoever for his decision to deprive the successful plaintiff of its costs and yet it was not shown that the defendant had been guilty of some misconduct which led to litigation. In the court’s view the learned Judge’s order was wrong and for the foregoing reasons, the plaintiff’s appeal succeeds as to the award of interest and costs on the principal sum awarded.”

20. As said hereinbefore, even though the award of costs is a discretionary jurisdiction, the said discretion is never unfettered but is governed by clear words of a statute. Thus, in *Republic v Minister for Agriculture & 2 Others Ex parte Samuel Muchiri W’Njuguna* [2006] eKLR the High Court observed that an appellate court will interfere with the exercise of discretion where the trial court misdirected itself or failed to consider relevant principles.
21. Applying these principles to the instant case, the Court finds that the learned magistrate erred in law and in principle by failing to award costs to the appellant without assigning any reason for such departure from the established rule that costs follow the event.
22. For that error, the appeal succeeds. The order of the trial court declining to award costs is hereby set aside and substituted with an order awarding the appellant costs of the suit before the trial court to the appellant to be born and paid by the respondent.
23. Having succeeded here, the law follows it with favour and demands that he gets the costs of this appeal as the successful party.

DATED, SIGNED AND DELIVERED VIRTUALLY, AT LODWAR, THIS 7TH DAY OF NOVEMBER 2025.

PATRICK J O OTIENO

JUDGE

