

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT GARSEN
CIVIL APPEAL NO. E010 OF 2022

TAWAKAL AIRBUS LIMITEDAPPELLANT
VERSUS
RIZIKI ABUBAKAR MWANGO.....
.....RESPONDENT

RULING

1. This matter came up for mention before the Deputy Registrar of this court on the 6th August 2025 when counsel for the Appellant, Ms Magina holding brief for Mr. Ndolo, told the court that the appellant wished to withdraw the appeal with no order as to costs. Mr. Wambua Kilonzo for the Respondent sought for the costs while arguing that costs follow the event. The deputy Registrar then referred the matter to this court for the court to determine the issue.
2. The matter was mentioned before this court on the 16/10/2025 when Mr. Kilonzo appeared but counsel for the Appellant was not present. Mr. Kilonzo indicated that they had served the advocates for the Appellant with the mention date but the court did not find evidence of service. The matter was deferred to 30/10/2025.
3. On the said date, Counsel for the appellant did not make appearance. Counsel for the Respondent, Miss Nyabuto, indicated that they had served the advocates for the appellant with the mention date of 30/10/25 and an affidavit of service was filed. She sought for costs of

withdrawal of the appeal. The court deferred the matter to 6/11/25 to confirm service.

4. The matter was thereafter mentioned on 6/11/25 when Miss Nyabuto said that they had served the advocates for the Appellant with that day's mention date and they had not appeared. The court fixed the matter for ruling on 13/11/25.
5. I have considered the application to withdraw the appeal. The Appellant sought to withdraw the suit with no order as to costs which the Respondent opposed in regard to costs.
6. I have perused the affidavit of service by a process server known as Teddy Kenga sworn on 16th October 2025 stating that he had served the firm of Kimondo Gachoka & Co. Advocates with the mention Notice dated 16th October 2025 that indicated that the matter was fixed for mention on 30/10/25. The advocates for the appellant did not turn up on that day. It is clear from the referred to affidavit of service that the appellants were served with the mention notice of 30th October 2025 and they did not appear.
7. It is trite law that costs follow the event. In view of the fact that the firm of Kimondo Gachoka & Co. Advocates were served to attend court on 30th October 2025 and they did not appear, the application by the firm of Wambua Kilonzo & Co. Advocates to be paid costs upon withdrawal of the appeal is thus not opposed.
8. I have noted from the court record that the firm of Wambua Kilonzo & Co. Advocates has appeared in the matter and filed several documents. There is no reason

for them to be denied costs upon withdrawal of the appeal. Accordingly, the application by the appellant to withdraw the appeal as sought before the Deputy Registrar is allowed. I order the appellant to pay the Respondent the costs incurred in the appeal.

9. Orders accordingly

10. The order issued herein to apply in Garsen High Court **Civil Appeal Nos. E018 of 2022 - Coast Raha Limited -v- Abdalla Kalume Kenga** and **E011 of 2022 - Tawakal Airbus Limited -v- Ali Siyaka Shee Masud, also known as Ali Siaka.**

Delivered, dated and signed at GARSEN this 21st day of November 2025

J. N. NJAGI
JUDGE

In the presence of:

N/a for Appellant

Ms Kisoto for Respondent

Court Assistant: Ms Rahma