

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

HIGH COURT CIVIL CASE NO. 13 OF 2017

DEDAN KIMATHI UNIVERSITY.....PLAINTIFF

VERSUS

CONSUMER FEDERATION OF KENYA.....1ST

DEFENDANT

LUCY WANJIKU GITUMBI.....2ND

DEFENDANT

RULING

1. The Plaintiff herein **DEDAN KIMATHI UNIVERSITY** had filed in the High Court in Nyeri a Civil Suit **No. 13 of 2017** against the Defendant **COFEK** through the Complaint dated **12th July 2017**.
2. On **13th May 2021**, the Suit was settled by way of a Consent in the following terms.

“(a) THAT the 1st Defendant do give the Plaintiff an undertaking not to carry out any defamatory allegations against it henceforth and delete the allegations complained of

within fourteen (14) days from the date hereof.

(b) THAT the 1st Defendant do utilize its website and Twitter handles to support the plaintiff's events for the next three (3) months from the date of the consent hereof.

(c) THAT the issue of costs will be determined by the Honourable Court through written submissions hereof."

3. In compliance with this consent both parties filed in court written

submissions on the issue of costs **ONLY**. The plaintiff's submissions are

dated **4th May 2022** whilst the 1st Defendants submissions are dated

28th April 2022.

ANALYSIS AND DETERMINATION

4. I have considered the nature of the suit filed in the High Court as well

as the written submissions filed by both parties.

5. The issue of costs is governed by **Section 27** of the **Civil Procedure**

Act Cap 21, Laws of Kenya which provides as follows:

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 to give all necessary directions for the purposes aforesaid; and the fact that the court or judge 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 order.

(2) The court or judge may give interest on costs at any rate not exceeding fourteen per cent per annum, and such interest shall be added to the costs and shall be recoverable as such.

6. From this provision it is evident that the issue of costs lies at the discretion of the trial court.

7. In the case of **Farah Awad Gullet v CMC Motors Group Limited**

[2018] the **Court of Appeal** stated as follows:-

It is our finding that the position in law is that costs are at the discretion of the court seized up of the matter with the usual caveat being that such discretion should be exercised judiciously meaning without caprice or whim and on sound reasoning secondly that a court can only withhold costs either partially or wholly from a successful party for good cause to be shown.

8. The **Supreme Court of Kenya** set out guiding principles applicable in

the exercise of the courts discretion in the case of **Jasbir Singh Rai &**

3 others v Tarlochan Singh Rai & 4 others, SC Petition No. 4 of

2012; [2014] eKLR, as follows:-

“(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, before, during and subsequent to the actual process of litigation..... Although there is eminent good sense in the basic rule of costs - that costs follow the event - it is not an invariable rule and, indeed, the ultimate factor on award or non-award of costs is the judicial discretion. It follows, therefore, the costs do not, in law, constitute an unchanging consequence of legal proceedings - a position well illustrated by the considered opinions of this Court in other cases.”

9. This was a matter in which the Plaintiff sued the Defendants for

defamation. The suit was eventually settled by way of the consent dated

13th May 2021.

10. By that consent the Defendant was ordered to delete all allegations made

against the Plaintiff on electronic format and was further ordered to

provide support for the plaintiffs events for a period of three (3) months.

In essence therefore the claim of defamation was established.

11. The defendant submits that the suit was a public interest suit and urges

That each party be directed to bear its own costs.

12. **Blacks Law Dictionary 8th Edition** defines Public Interest as “The

general interest of the public that warrants recognition and protection.”

Public Interest is that in which the general public would have a stake

and/or interest. **‘Public Interest Litigation’** is that litigation where

the Plaintiff/Petitioner is seeking to advance the Public interest as

opposed to any personal gain.

13. In the case of **ASHOK KUMAR PANDEY -VS- STATE OF WEST**

BENGAL Petition No. 199 of 2003, the **Supreme Court of India**

pronounced itself on 'Public Interest' as follows:-

Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity seeking is not lurking. It is to be used as an effective weapon in the armoury of law for delivering social justice to the citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta. As indicated above, Court must be careful to see that a body of persons or member

of public, who approaches the court is acting bona fides and not for personal gain or private motive or political motivation or other oblique consideration. The Court must not allow its process to be abused for oblique consideration. Same persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busy bodies deserve to be thrown out be rejection at the threshold, and in appropriate cases with exemplary costs.

14. This was a case where the Plaintiff University which a Public body claimed that the Defendant had caused and/or allowed to be published in their website certain articles which the plaintiff considered as defamatory to the University and its staff.

15. There was no successful party in the suit as the matter was settled by

consent. Given that the plaintiff is a University of Public status the

issues raised in the suit may prove useful to its present and aspiring

students and to the public at large. There was to be no personal gain

to any party in the suit. For these reasons I find that the suit did have

a public interest/angle. As such the order which commends itself to

me is that each party should bear their own costs. It is so ordered.

Dated in Nyeri this 28th day of November 2025.

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MAUREEN A. ODERO
JUDGE

ORIGINAL