

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL DIVISION
CIVIL CASE NO.132 OF 2015

HON. DR. EVANS KIDERO.....
PLAINTIFF

=VERSUS=

ERIC ACHOLI.....1ST

DEFENDANT

CHARLES APPLETON.....2ND

DEFENDANT

BRIAN DESOUZA.....3RD

DEFENDANT

ANIS PRINGLE.....4TH

DEFENDANT

JOSEPHAT MWAURA.....5TH

DEFENDANT

JACOB GATHECHA.....6TH

DEFENDANT

JOSEPH KARIUKI.....7TH

DEFENDANT

BENSON NDUNGU.....8TH

DEFENDANT

JOHN NDUNGU T/A KPMG KENYA9TH

DEFENDANT

RULING

1. This ruling is on the Plaintiff's Preliminary Objection dated 8th July 2025. By which the Plaintiff has objected to the Defendant's Party and Party Bill of Costs dated 21st May

2015. The said Bill was filed following the default dismissal of this suit.

2. This suit was filed by the Plaintiff sometime in April 2015. It was instituted through a Plaint dated 31st March 2015. The Plaint was accompanied with an Application. By which the Plaintiff was seeking interlocutory injunction to restrain the Defendant from publishing or distributing an allegedly defamatory report about the Plaintiff. The Application was a Notice of Motion dated 31st March 2015.
3. Granting the injunction, Sergon J, in a ruling dated 30th September 2015, further directed that the costs of the Application do abide the outcome of the suit. Three years later, the Defendant filed an Application for orders that the suit had abated by operation of law. The Application also sought an order discharging the injunction earlier issued on 30th September 2015.
4. Sergon J allowed the Application, marked the suit as abated, discharged the injunction, and awarded the Defendants the costs of the Application. For avoidance of doubt, those costs were for the said Application. Not the costs of the suit itself.
5. The Defendant later filed a Bill of Costs for its Party and Party costs in this suit. It is this Bill that the Plaintiff has by this Preliminary Objection, opposed. His objection being that no costs of this suit were ever awarded to the Defendant. That the Defendant is purporting to infer costs where none were expressly awarded. That by so doing, the Defendant is usurping the power conferred to the court by Section 27 of the Civil Procedure Act (Cap 21 Laws of Kenya).

6. The Defendant has for its part opposed that Preliminary Objection; on the ground that the issue raised by it is not a pure issue of law, but a factual issue. Hence that it is an improper Preliminary Objection that should be dismissed.

Analysis and Determination

7. The Preliminary Objection was canvassed by both parties. With each party propagating its position. I have considered the Objection, as well as the rival positions taken by the parties on it. From those rival arguments of the parties on this Preliminary Objection, this Court is to determine whether this is proper Preliminary Objection raising a point of law, or whether it is on an issue of fact, hence improper one. If it passes this test, then I proceed to determine the Objection on its merits.
8. On whether the Plaintiff's opposition to the Defendant's Party and Party Bill of Costs, is a proper one to be raised by way of a Preliminary Objection, the authority of **Mukisa Biscuits Manufacturing Company Ltd v. West End Engineering Company Ltd [1969] EA 696**, is to the effect that only a pure point of law may be raised by way of a Preliminary Objection. A pure point of law that would terminate the proceedings or the suit, *in limine*.
9. I find that an issue relating to the award of costs, is an issue of law rather than one of fact. Hence a proper one to be raised by way of a Preliminary Objection. It is also such as will terminate the taxation of the Bill *in limine*. Therefore, the Defendant's contention that it is an issue of fact and not an issue of law, is misconceived. As the Preliminary Objection is on a point of law. This is in the context of the taxation proceedings.
10. Let me now proceed to the merits or otherwise, of the Objection. The final resting point of this suit, was the order issued by Kamau J, on 29th January 2019. Non-compliance with which, the dismissal orders that Serгон J had issued on

30th September 2015 would revert. The same only granted the costs of the Application, and not of the suit itself.

11. The said orders were clear and non-ambiguous on the issue of costs. Hence have to be interpreted literally as expressly stated; and require neither inference nor implication. Despite the principle that costs will usually follow the extent, an award of costs has to be express. Hence costs have to be expressly awarded.
12. They can neither be inferred nor be presumed by implication only. On costs, the latin maxim “***expressio unius est exclusion alterius***” is applicable. Whose English translation is “What is not expressly included is excluded, or, the expression of one thing is the exclusion of the other.”
13. Costs are not automatically-awarding or self-awarding. They cannot automatically award themselves. They have to be expressly awarded. After all Section 27 of the Civil Procedure Act (Cap 21 Laws of Kenya) gives courts the discretion to award costs. Where a court has not expressly awarded costs to a party, none are payable. My finding in this matter is that as costs of the suit were not awarded, they are not payable.
14. In the end therefore, the Preliminary Objection is hereby found to have merit. Hence is hereby upheld accordingly, with costs to the Plaintiff. For avoidance of doubt, these costs are the costs of the Objection itself.

DATED and DELIVERED at NAIROBI on this 3rd day of March 2026.

PROF (DR) NIXON SIFUNA

JUDGE