



**Gadano General Trading Company Limited v Kenya Railways
Staff Retirement Benefits Scheme (Environment and Land Case
E330 of 2025) [2026] KEELC 1382 (KLR) (19 February 2026) (Ruling)**

Neutral citation: [2026] KEELC 1382 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE E330 OF 2025**

J OMANGE, J

FEBRUARY 19, 2026

BETWEEN

GADANO GENERAL TRADING COMPANY LIMITED PLAINTIFF

AND

KENYA RAILWAYS STAFF RETIREMENT BENEFITS SCHEME .. DEFENDANT

RULING

1. The Plaintiffs vide an application dated 9th July 2025 sought various injunctive and protective reliefs against the Defendant arising from a lease agreement entered into between the parties in respect of LR No 209/6828 hereinafter referred to as the suit property. The parties had a lease agreement for a term of fifteen years commencing 12th January 2016 with an option for renewal for a further fifteen years.
2. The Plaintiffs contend that on the strength of the said lease it undertook massive investments on the suit premises. It was its case that on 5th July 2025 the Defendant without notice forcefully moved into the demised premises threatening eviction of the Plaintiff to pave way for an affordable housing project. The Plaintiffs sought the intervention of this Court to protect its contractual and possessory rights.
3. The Defendant opposed the application by way of Grounds of Opposition, challenging the jurisdiction of the court in view of a subsisting arbitration clause in the lease agreement. Subsequently, before the application could be heard on merit, the Plaintiff filed a Notice of Withdrawal dated 7th August 2025. The Defendant now seeks costs of the withdrawn application.
4. The court directed the parties to submit on the issue of costs. Counsel for the Defendant urged the court to grant costs of Kshs 14,272,966.56 as costs should follow the event. Counsel argued that the Defendant had filed pleadings and had incurred costs.
5. The sole issue for determination is whether the Defendant is entitled to costs following the withdrawal of the Plaintiff's application.



6. The award of costs is governed by Section 27 of the Civil Procedure Act which Section 27(1) of the Civil Procedure Act provides that:

“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...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.”

7. The general rule, as stated above, is that costs follow the event unless there is good reason to depart from that principle Party of Independent Candidates of Kenya v Mutula Kilonzo & 2 others [2013] eKLR).

8. The Supreme Court in Jasbir Singh Rai & 3 Others v Tarlochan Singh Rai & 4 Others [2014] eKLR held that although costs follow the event, the court retains judicial discretion to depart from that principle where circumstances so demand.

9. Similarly, in Republic v Rosemary Wairimu Munene Ex Parte Ihururu Dairy Farmers Co-operative Society Ltd [2014] eKLR, the court underscored that costs must be guided by the justice of each case.

10. The common thread in our jurisprudence is that costs should follow the event. However the court may depart from this general principle for good reasons. In the present matter, the Plaintiff approached the Court seeking protection against what it perceived as imminent and unlawful eviction from premises it had occupied under a long-term lease and upon which it had undertaken substantial investment.

11. The Defendant objected on the basis of an arbitration clause. However, it is now settled law that the existence of an arbitration agreement does not bar courts from granting interim protective relief. Section 7 of the Arbitration Act expressly preserves the jurisdiction of courts to grant interim measures of protection.

12. The application was withdrawn promptly before substantive hearing. No affidavits were canvassed and no judicial time was substantially expended. Rather, the withdrawal allows Alternative Dispute Resolution a chance. This court is enjoined by Article 159 of the Constitution to promote Alternative Dispute Resolution. Penalizing parties with high costs would discourage Alternative Dispute Resolution. I note that the parties will still be engaged in Arbitration which will be able to determine all issue including costs incurred by the parties. I therefore do not award any costs.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 19TH DAY OF FEBRUARY 2026.

JUDY OMANGE

JUDGE.

IN THE PRESENCE OF:

N/A for the Plaintiff.

N/A for the Defendant.

Peter – Court Assistant.

