

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI**  
**CAUSE NO. E033 OF 2024**

**JEREVASIO NYAGA IRERI.....CLAIMANT**

**VERSUS**

**THE COUNTY GOVERNMENT OF EMBU.....1<sup>ST</sup>  
RESPONDENT**

**THE COUNTY SECRETARY OF  
PUBLIC SERVICE EMBU COUNTY GOVERNMENT....2<sup>ND</sup>  
RESPONDENT**

**EMBU COUNTY GOVERNMENT  
PUBLIC SERVICE BOARD.....3<sup>RD</sup>  
RESPONDENT**

**RULING**

1. This matter falls for determination solely on the issue of costs. On 21<sup>st</sup> May 2025, counsel for the respective parties informed the Court that the dispute had been partially resolved through mediation, leaving only the question of costs outstanding.

**Submissions**

2. Accordingly, the Court directed the parties to file submissions limited to the issue of costs. On behalf of the Claimant, it was submitted that the Respondent's opposition to an award of costs amounted to an attempt to benefit from its own conduct while transferring the burden of litigation to him. To this

end, reliance was placed on the case of *Jasbir Singh Rai & Others v Tarlochan Singh Rai & 4 Others (2014) eKLR* for the proposition that costs ordinarily follow the event unless there exist compelling reasons to depart from that principle.

3. The Claimant further contended that the mere fact of settlement through mediation does not, in itself, disentitle a successful party to an award of costs.
4. On the part of the Respondent, it was submitted that throughout the period of suspension, the Claimant remained on full pay, inclusive of all applicable allowances, and that his salary was never withheld at any time.

### **Analysis and Determination**

5. As is evident from **Section 27 of the Civil Procedure Act**, the general principle is that costs follow the event. Be that as it may, the Court retains discretion to determine by whom, from what property, and to what extent such costs are to be paid.
6. Further, under **Section 12(4) of the Employment and Labour Relations Court Act**, the Court is vested with the discretion to issue such orders on costs as it deems just in proceedings under the said Act.

7. The record bears that the present matter was ultimately resolved through mediation with the lifting of the Claimant's suspension.
8. In the case of *David Kiptum Korir v Kenya Commercial Bank & another [2021] eKLR*, the Court held that the settlement of a dispute, whether by consent or otherwise, does not preclude an award of costs.
9. A similar position was adopted in the case of *Morgan Air Cargo Limited v Evrest Enterprises Limited [2014] eKLR*, where the Court observed that while settlement by consent is a relevant consideration, it is only one of the factors to be weighed in determining whether to award costs. The Court emphasized that a consent settlement does not automatically disentitle a party from costs.
10. On the question of who constitutes a successful party, the Court held that such a party is one so declared after consideration of the overall outcome of the litigation, which includes the entirety of the proceedings, including any negotiations or steps leading to and culminating in a consent, as well as the conduct of the Plaintiff, among other relevant factors.



They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules**, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court had been guided by Article 159(2)(d) of the Constitution which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

**STELLA RUTTO**

**JUDGE**