



**Kasaine v Kasaine (Commercial Petition E626 of 2021)  
[2026] KEHC 4889 (KLR) (Commercial and Tax) (19 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 4889 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL PETITION E626 OF 2021**

**F GIKONYO, J**

**MARCH 19, 2026**

**BETWEEN**

**SINTOYIA CINDY KASAINA ..... PETITIONER**

**AND**

**TAJUDDEN ADETOKUNBO ADEPETU ..... RESPONDENT**

**RULING**

1. This is a ruling on costs following the withdrawal of the application dated 3.6.2025 through a notice of withdrawal dated 28.7.2025.
2. On 22.10.2025, Ms. Kiama for Mr. Mburu appeared for the applicant and Ms. Impano appeared for the respondent.
3. Ms. Impano urged the court to award costs of the withdrawn application to the respondent as had opposed it and filed a preliminary objection.
4. Ms. Kiama urged the court to order that each party bears its own costs. She asserted that the matter had not proceeded substantially and that the application was withdrawn as soon as it was practicable.
5. The general principle is 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’. Section 27 of the *Civil Procedure Act*.
6. The court has a wide and unfettered discretion to award costs. But, the discretion ought to be exercised judicially based on the circumstances of a case. *Morgan Air Cargo Limited v Evrest Enterprises Limited* [2014] eKLR
7. Some of the relevant factors in determining the issue of costs are: -
  - (i) the conduct of the parties,



- (ii) the subject of litigation,
  - (iii) the circumstances which led to the institution of the proceedings,
  - (iv) the events which eventually led to their termination,
  - (v) the stage at which the proceedings were terminated,
  - (vi) the manner in which they were terminated,
  - (vii) the relationship between the parties and
  - (viii) the need to promote reconciliation amongst the disputing parties pursuant to Article 159 (2) (c) of *the Constitution*;
  - (ix) the likely consequences of the order for costs. Cecilia Karuru Ngayu v Barclays Bank of Kenya & another [2016] KEHC 7064 (KLR)
8. In this matter, the respondent filed grounds of opposition to the application dated 3.6.2025. The application was withdrawn before it was set down for hearing. However, the respondent spent time and resources on the matter and therefore, I find that she is entitled to the costs.
9. Except, however, costs should not be used as punishment to a party who came to court in exercise of the right to access justice. Accordingly, I order that the applicant pays the respondent's thrown away costs of KE. 5,000.

**DATED, SIGNED AND DELIVERED AT NAIROBI THROUGH MICROSOFT TEAMS ONLINE APPLICATION THIS 19<sup>TH</sup> DAY OF MARCH, 2026**

.....

**F. GIKONYO M**

**Judge**

In the presence of: -

Ms. Impano for Petitioner

Ms. Kiama for Mburu for Respondent

CA- Ivan/Aggrey

