



REPUBLIC OF KENYA



Kavila v Mulekyo & Company Advocates (Miscellaneous Reference Application 5 of 2022) [2024] KEELC 3757 (KLR) (24 April 2024) (Ruling)

Neutral citation: [2024] KEELC 3757 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
MISCELLANEOUS REFERENCE APPLICATION 5 OF 2022**

TW MURIGI, J

APRIL 24, 2024

BETWEEN

JACKSON MUTUA KAVILA APPLICANT

AND

MULEKYO & COMPANY ADVOCATES RESPONDENT

RULING

1. The Applicant filed the Chamber Summons application dated 9th November 2023 seeking the following orders:-
 1. Spent.
 2. That pending inter partes hearing of this application, the Honourable court be pleased to issue an order staying the execution of the ruling of the Taxing Officer delivered on 14th August 2023 and any other consequential orders.
 3. That pending the hearing and determination of this application, the Honourable Court be pleased to issue an order staying the execution of the ruling of the Taxing Officer delivered on 14th August 2023 and any other consequential orders.
 4. That this Honourable Court be pleased to grant the Applicant herein leave to file an Objection and Taxation Reference to this Honourable Court against the Ruling of the Honourable Taxing Officer delivered on 14th August 2023.
 5. That the leave granted in prayer (4) above do operate as stay of execution of the ruling of the Taxing Officer aforesaid and any other consequential proceedings pending hearing and determination of the intended Reference.
 6. That the Objection to the Taxing Officer and the Reference annexed hereto be deemed as duly filed and served upon payment of requisite fees.



7. That the costs of the application be in the cause.
2. The application was opposed by the Respondent by way of grounds of opposition dated 20th November 2023.
3. When the matter came up for hearing on 7/3/2024, Mr. Mundia, Learned Counsel for the Applicant informed the Court that they had filed a Notice of Withdrawal of the application with no orders as to costs.
4. Mr Muuo Learned Counsel for the Respondent was not opposed to the withdrawal subject to payment of costs. The application was withdrawn save for the issue of costs.

Analysis And Determination

5. The only issue for determination is whether the Respondent is entitled to costs of the application.
6. Section 27(1) of the *Civil Procedure Act* 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 give all the necessary direction for the purposes aforesaid and the fact that the court 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 reasons otherwise direct.

7. In *Cecilia Karuru Ngayu v Barclays Bank of Kenya & Another* [2016] eKLR the court held that;

“In determining the issue of costs, the court is entitled to look at *inter alia*

- (i) the conduct of the parties,
- (ii) the subject of litigation,
- (iii) the circumstances that led to the institution of the proceedings,
- (iv) the events which eventually led to the 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) of the *constitution*.”

8. In tracing the steps taken by the parties herein, the record shows that the Applicant filed the instant application and sought for the orders stated therein. The Respondent opposed application vide the grounds of opposition dated 20th November 2023. The Respondent’s grounds of opposition is an event within the phrase ‘costs follow the event’. The Respondent incurred costs in carrying out the above exercise and is therefore entitled to costs. The Applicant has not given any sufficient reason why the Respondent should not be awarded costs. This court will therefore in exercise of its discretion award the Respondent costs of the application.



9. In the end, the Applicant is ordered to pay costs of the application to be agreed upon by the parties or the taxing master of this court.

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HON. T. MURIGI

JUDGE

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 24TH DAY OF APRIL, 2024.

IN THE PRESENCE OF:

Mundia for the Applicant

Court assistant Alfred

