



**Saka & 32 others v Henkel Polymer Co. Ltd t/a Henkel Chemiclas (EA) Ltd
(Cause E421 of 2022) [2025] KEELRC 34 (KLR) (17 January 2025) (Ruling)**

Neutral citation: [2025] KEELRC 34 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E421 OF 2022
SC RUTTO, J
JANUARY 17, 2025**

BETWEEN

BENSON SAKA & 32 OTHERS CLAIMANT

AND

**HENKEL POLYMER CO. LTD T/A HENKEL CHEMICLAS (EA)
LTD RESPONDENT**

RULING

1. This matter only comes up for determination with respect to the issue of costs. On 23rd October 2024, Advocates for the parties in the matter informed the Court that they had settled the matter through mediation and that the only outstanding issue was costs.
2. As per the Mediation Settlement Agreement dated 20th August 2024, the parties agreed to settle the main claim in favour of the Claimants to the tune of Kshs. 20,723,190.23. To this end, the final dues payable to each Claimant was tabulated in the said Agreement.
3. Under Clause E of the said Agreement, the parties agreed to refer the issue of costs to the Court for determination.

Submissions

4. Following adoption of the Mediation Settlement Agreement, the Court directed parties to file their respective submissions with respect to the issue of costs.
5. On the Claimants' part, it was submitted that they should be awarded costs as the Claim was only compromised after the institution of the suit. In support of the Claimants' argument, the Court was invited to consider the determinations in *Baridi Felix Mbevo v Musee Mati & 2 others* (2021) eKLR and *Party Independent Candidate of Kenya & another v Mutula Kilonzo & 2 others* (2013) eKLR.



6. The Claimants further posited that Courts have consistently awarded costs to the party that initiated proceedings when the outcome was favourable or led to a mediated settlement.
7. In conclusion, the Claimants urged the Court to exercise discretion in their favour in awarding them costs as they were compelled to seek the Court's intervention to secure the payment of their dues.
8. The Respondent on the other hand submitted that there are instances where costs are not awarded but for good reasons. In support of this position, the Respondent cited the case of *Jasbir Singh Rai & others v Tarlocham Rai & 2 others* (2014) eKLR.
9. According to the Respondent, the mediation was successful as the matter was resolved and the results of the mediation were multiple because there was forgiveness, reconciliation and the parties are now fostering a new working relationship. The Respondent further argued that all parties were winners given the manner in which the proceedings were terminated. To this end, the Respondents invited the Court to consider the determinations in the case of *Bukusu v Kizito (Civil Case 493 of 2013)* [2024] KEHC 6354 (KLR) and *John Njogu v Joseph Mwangi Kagunda & another* [2019] eKLR.
10. The Respondent further submitted that since the matter was settled amicably, it is not in the interests of justice to condemn any of the parties to pay costs.

Analysis and Determination

11. Evidently, the main issue for determination is which party should bear the costs of the suit. Section 27 of the *Civil Procedure Act* is key hence I will reproduce the same: -

“[27](1)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 directions 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 reason otherwise direct.”

12. This position was amplified in *Republic vs Rosemary Wairimu Munene, Ex-Parte Applicant vs Ihururu Dairy Farmers Co-operative Society Ltd* as follows: -

“The issue of costs is the discretion of the court as provided under the above section. The basic rule on attribution of costs is that costs follow the event..... It is well recognized that the principle costs follow the event is not to be used to penalize the losing party; rather it is for compensating the successful party for the trouble taken in prosecuting or defending the case.”

13. As to the word "event", Justice (Rtd) Kuloba defines the same in his literary work "Judicial Hints on Civil Procedure" to mean: -

“The words "the event" mean the result of all the proceedings to the litigation. The event is the result of entire litigation. It is clear however, that the word "event" is to be regarded as a collective noun and is to be read distinctively so that in fact it may mean the "events" of separate issues in an action. Thus the expression "the costs shall follow the event" means that the party who on the whole succeeds in the action gets the general costs of the action,



but that, where the action involves separate issues, whether arising under different causes of action or under one cause of action, the costs of any particular issue go to the party who succeeds upon it. An issue in this sense need not go to the whole cause of action, but includes any issue which has a direct and definite even in defeating the claim to judgment in the whole or in part”.

14. As stated herein, this matter was settled by agreement of the parties through mediation. In the case of David Kiptum Korir vs Kenya Commercial Bank & another [2021] eKLR, the Court had this to say on the issue of costs with regards to matters settled by consent: -

“ 30. As such, the settlement of a matter whether by consent or otherwise, is not a bar to costs. In addition, settlement of a case by consent does not necessarily mean there is no successful party.”

15. And further, in Morgan Air Cargo Limited vs Evrest Enterprises Limited [2014] eKLR, the learned Judge reckoned thus: -

“But it does not necessarily mean that, where parties have entered into consent to settle a proceeding, no costs should be awarded, or there is no successful party in the matter. The incidence of settlement by consent of the parties, to my mind, is just but a vital factor the court should consider, within the circumstances of each case, in deciding whether costs are payable or not. A consent recorded in settlement of a proceeding is not an automatic disentitlement of costs and I, would, therefore, hesitate profoundly to make any generalized propositions on the law that consent is an automatic disentitlement of costs without reference to the context of the particular case...It should also be understood well; that a successful party does not refer to a person who has been taken through rigorous and convoluted motions of litigation by the other party. Similarly, a party does not cease to be a successful party merely because he met little or no contest in his claim against the Defendant. He is a successful party because he is declared so by the Court after looking at the result of the entire litigation, which includes; negotiations or steps which culminates to, and the recording of a consent thereto, conduct of the Plaintiff etc..” Underlined for emphasis

16. As stated herein, the crux of the main dispute was payment of the Claimant’s dues following a redundancy exercise by the Respondent. Following negotiations, the ensuing settlement was in favour of the Claimants.
17. Applying the determination in Morgan Air Cargo Limited vs Evrest Enterprises Limited (supra), it is apparent that the Claimants herein were the successful parties in the entire dispute. It is also notable that the dues payable to the Claimants by and large constitute their statutory entitlement as opposed to compensatory damages.
18. Therefore, despite the matter being settled through mediation, the Claimants herein are not disentitled to costs.
19. In light of the foregoing, the Claimants herein being the successful litigants, are awarded costs which shall be taxed by the Deputy Registrar of the Court.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 17TH DAY OF JANUARY, 2025.

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STELLA RUTTO



JUDGE

In the presence of:

For the Claimants Ms. Arum

For the Respondent No appearance

Court Assistant Millicent

Order

In view of the declaration of measures restricting Court operations due to the Covid-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. 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

