



**Kenya Building Construction Timber and Furniture Industries  
Employees Union v Structural Construction International Limited (Cause  
117 of 2019) [2025] KEELRC 831 (KLR) (14 March 2025) (Ruling)**

Neutral citation: [2025] KEELRC 831 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 117 OF 2019  
SC RUTTO, J  
MARCH 14, 2025**

**BETWEEN**

**KENYA BUILDING CONSTRUCTION TIMBER AND FURNITURE  
INDUSTRIES EMPLOYEES UNION ..... CLAIMANT**

**AND**

**STRUCTURAL CONSTRUCTION INTERNATIONAL  
LIMITED ..... RESPONDENT**

**RULING**

1. What comes up for determination is the issue of costs following the withdrawal of the Memorandum of Claim filed on 26<sup>th</sup> February 2019 by the Claimant.
2. The record bears that the Claimant Union instituted the suit herein on behalf of Julius Wachira (grievant) who it averred is its member.
3. According to the Claimant, the grievant was employed by the Respondent as a driver with effect from 1<sup>st</sup> May 2016. That *vide* a letter dated 27<sup>th</sup> June 2016, the grievant's employment was terminated following a minor accident, as a result of which one side mirror of the motor vehicle he was assigned, was damaged.
4. The said notice of termination was later revoked and the grievant carried on with his work in the same capacity. That he was later issued with a subsequent notice of termination on grounds of redundancy. It is further averred that the grievant was not paid his dues and before the redundancy notice came to an end, he was recalled back to work.
5. The Claimant has averred that the grievant continued working for the Respondent until 14<sup>th</sup> April 2018 when he was verbally terminated from employment and notified that his services were no longer required.



6. Against this background, the Claimant asked the Court to award the grievant the sum of Kshs 168,065/= being notice pay, unpaid annual leave pay, service pay and underpaid wages. In addition, the Claimant sought compensation for the unlawful termination of the grievant.
7. The Respondent opposed the Claim through its Statement of Response which was filed alongside a Counterclaim on 15<sup>th</sup> April 2019. In the Response, the Respondent averred that the redundancy notice was never effected as it was able to get more projects. According to the Respondent, the grievant continued working until 15<sup>th</sup> January 2018 when he left employment without notice.
8. In the Counterclaim, the Respondent avers that it is entitled to one month's salary in lieu of notice being the sum of Kshs 19,560/=. To this end, the Respondent asked the Court to dismiss the Claim with costs and enter judgment in its favour for the sum of Kshs 19,560/=.
9. From the record, the matter was set down for mention on three occasions but there was no appearance from both parties.
10. When the matter was placed before this Court on 7<sup>th</sup> November 2024 for purposes of taking pretrial directions, Ms. Chege, Counsel on record for the Claimant asked for leave to file a Reply to the Respondent's Counterclaim. Ms. Chege further asked the Court to allow her time to trace the grievant.
11. The matter was subsequently mentioned on 4<sup>th</sup> December 2024 when Ms. Chege notified the Court that she had not been able to trace the grievant. This being the case, the Court directed that a Notice be issued to the parties to show cause why the matter should not be dismissed for want of prosecution.
12. On 10<sup>th</sup> December 2024, when the Notice to Show Cause came up, Ms. Chege informed the Court that she was inclined to withdraw the matter as her efforts to reach the grievant had been futile as his mobile phone was out of service. To this end, she asked the Court to mark the matter as withdrawn with no orders as to costs.
13. On his part, Mr. Maranga, Counsel on record for the Respondent, prayed for the award of costs upon withdrawal of the suit.
14. Ms. Chege implored for consideration arguing that the Claimant was unable to reach the grievant but Mr. Maranga maintained his claim for the costs of the suit.
15. Subsequently, the Court directed both parties to canvass the issue of costs by way of written submissions.
16. On its part, the Claimant has submitted that it brought the Claim under the *Labour Relations Act* on behalf of the grievant in a representative capacity under Section 22 of the *Employment and Labour Relations Court Act*.
17. The Claimant has further posited that the relationship between the Union and its members is special as it allows the Unions to commence disputes on behalf of their members in their names.
18. The Respondent on the other hand, has placed reliance on Section 27 of the *Civil Procedure Act* and has submitted that there is no such good ground which might have included its wrongful conduct, to mandate the court to depart from the rule that costs follow the event.
19. It is the Respondent's further submission that the lawful and legitimate steps it took were not limited to procuring the services of its advocates on record, paying court filing fees and retrieving necessary documentation to defend the claim. To this end, the Respondent urged the Court to award it costs in a bid to compensate it for the trouble taken in defending the case.



## **Analysis and Determination**

20. The basic rule on attribution of costs is that costs follow the event. As was held by the Supreme Court in the case of *Jasbir Singh Rai & Three Others v Estate of Tarlochan Singh Rai & 4 others*, Petition No. 4 of 2012, there is no prescribed definition of any set of good reasons that can justify a court's departure, in awarding costs, from the general rule, costs follow the event.
21. In the present case, the reason advanced by the Claimant for the withdrawal of the suit is that their efforts to reach the grievant have been futile.
22. As it is, the instant suit was brought by the Claimant Union on behalf of the grievant in its representative capacity. Indeed, Section 22 of the *Employment and Labour Relations Court Act* confers capacity on trade unions to sue, in their names, on behalf of their members who are aggrieved by the actions of their employer.
23. It should however be appreciated that despite a Union suing in its name on behalf of an employee, the claim belongs to the said employee (grievant) for all intents and purposes. Therefore, the continuity of a suit is pegged on the availability and willingness of the grievant to prosecute the same. This is for the simple reason that the grievant's complaint is between him/her and the former employer. As such, the Union only acts as a vessel for channeling the said complaint to Court. These are the circumstances obtaining in the case herein.
24. It is also worth noting that the suit herein was filed in 2019, hence to date, six years have elapsed. Therefore, it is more than probable that the Claimant has lost touch with the grievant who is the central party in these proceedings.
25. In light of the foregoing, it is this Court's view that the withdrawal of the suit by the Claimant is founded on a sound reason.
26. Accordingly, bearing in mind that the primary reason attributed for the withdrawal of the suit, is the unavailability of the grievant, the Court is inclined to order that the suit be marked as withdrawn with each party bearing its own costs with respect to the Claim.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 14<sup>TH</sup> DAY OF MARCH 2025.**

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**STELLA RUTTO**

**JUDGE**

In the presence of:

For the Claimant No appearance

For the Respondent Mr. Maranga

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 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> 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**

