



**Kebongo v Barclays Bank of Kenya presently known as Absa Bank Kenya PLC  
(Cause 1340 of 2018) [2024] KEELRC 110 (KLR) (1 February 2024) (Ruling)**

Neutral citation: [2024] KEELRC 110 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 1340 OF 2018  
L NDOLO, J  
FEBRUARY 1, 2024**

**BETWEEN**

**STELLA NKATHA KEBONGO ..... CLAIMANT**

**AND**

**BARCLAYS BANK OF KENYA PRESENTLY KNOWN AS ABSA BANK KENYA  
PLC ..... RESPONDENT**

**RULING**

1. By a notice dated July 11, 2023, the claimant expressed her intention to withdraw her claim. While the Respondent was not opposed to the withdrawal of the suit, it pressed for costs.
2. The court gave the parties an opportunity to settle the issue of costs but there was no agreement. I therefore directed them to address the court on this issue, by way of written submissions.
3. The general principle is that costs follow the event, meaning that the successful party carries the day. The award of costs is however also a matter of judicial discretion to be exercised within the unique circumstances of each case.
4. In her written submissions the claimant referred to the decision in *Morgan Air Cargo Limited v Everest Enterprises Limited* [2014] eKLR where it was held that in determining a dispute on costs, courts ought to be guided by the special circumstances of the case, including the relationship and conduct of the parties.
5. The claimant concedes that her move to withdraw this claim was informed by the decision of this court in its ruling delivered on January 26, 2023, by which the claimant was allowed a window to regularise her pleadings. The claimant further concedes that the filing of a fresh claim as opposed to amending her earlier claim in Cause No 460 of 2017 was an error of judgment.



6. Looking at the claimant's dispute in totality, it is evident that her claim kept mutating on account of emerging developments at the work place. In light of this, coupled with the claimant's express admission of error in judgment, I will save her from the shackle of costs based on her move to withdraw the present claim, which I am persuaded, was done in good faith.
7. Consequently, I direct that the present claim shall be marked withdrawn with no order for costs.
8. Orders accordingly.

**DELIVERED VIRTUALLY AT NAIROBI THIS 1<sup>ST</sup> DAY OF FEBRUARY 2024**

**LINNET NDOLO**

**JUDGE**

**Appearance:**

**Mr. Muchoki for the Claimant**

**Mr. Okweh Achiando for the Respondent**

