



**Cattermole v Henkel Chemicals (EA) Limited (Cause
1475 of 2018) [2024] KEELRC 825 (KLR) (4 April 2024) (Ruling)**

Neutral citation: [2024] KEELRC 825 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1475 OF 2018**

**L NDOLO, J
APRIL 4, 2024**

BETWEEN

DAVID CATTERMOLE CLAIMANT

AND

HENKEL CHEMICALS (EA) LIMITED RESPONDENT

RULING

1. By a Notice of Motion dated January 12, 2022, the Respondent sought dismissal of the Claimant's claim for want of prosecution. The Claimant did not respond to the Motion and at a court appearance on 14th November 2023, his Counsel informed the Court that he had instructions to withdraw the claim.
2. While the Respondent was not opposed to withdrawal of the claim, it asked for costs. The Court gave the parties an opportunity to agree on the issue of costs but there was no agreement. I therefore directed the parties to file written submissions on this issue. At the time of writing this ruling, only the Respondent had filed submissions.
3. The Respondent submits that it is a settled principle that costs follow the event, meaning that the successful party is entitled to costs unless the Court, for sufficient reasons, orders otherwise. The Respondent relies on the decision in *Joseph Oduor Anode v Kenya Red Cross Society* [2012] eKLR where Odunga J (as he then was) held that where the Court departs from the general principle that costs follow the event, reasons for the departure must be given.
4. In this case, the Claimant chose to withdraw the claim and as conceded by the Respondent, a party's right to withdraw a matter pending in court cannot be curtailed. In this regard, the Respondent relies



on the decision in *Nicholas Kiptoo Arap Salat v Independent Electoral and Boundaries Commission & 7 others* [2014] eKLR where the Supreme Court stated as follows:

“ A party’s right to withdraw a matter before the court cannot be taken away. All that a court can do is to make an order for costs where it is deemed appropriate.”

5. The Respondent’s case is that no good reason has been presented as to why the Court should depart from the general principle that costs follow the event.
6. Granted that a decision on costs is the product of the exercise of judicial discretion, a party asking the Court to rule in its favour must give reasons as to why the Court should exercise discretion in its favour. In this case, the Claimant chose not to file submissions as directed by the Court. This omission follows the same pattern as the Claimant’s failure to respond to the Respondent’s application for dismissal of the claim for want of prosecution.
7. In the circumstances, the Court has no basis upon which to exercise discretion in the Claimant’s favour. I therefore direct that the Claimant will pay costs to the Respondent to be assessed by a Taxing Master in the normal manner.
8. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 4TH DAY OF APRIL 2024

LINNET NDOLO

JUDGE

Appearance:

Mr. Owala for the Claimant

Mr. Gitonga for the Respondent

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