



**Ali v National Health Insurance Fund & 2 others; Transparency International & 2 others
(Interested Parties) (Cause E714 of 2022) [2023] KEELRC 1838 (KLR) (31 July 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1838 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E714 OF 2022
BOM MANANI, J
JULY 31, 2023**

BETWEEN

KHADIJA ALI CLAIMANT

AND

NATIONAL HEALTH INSURANCE FUND 1ST RESPONDENT

JOSEPH TONUI 2ND RESPONDENT

ROSEMARY GACHEMI 3RD RESPONDENT

AND

TRANSPARENCY INTERNATIONAL INTERESTED PARTY

STATE CORPORATIONS ADVISORY COMMITTEE INTERESTED PARTY

INSTITUTE OF HUMAN RESOURCE MANAGEMENT .. INTERESTED PARTY

RULING

1. By a consent order recorded on April 14, 2023 the parties agreed to have the letter dated July 29, 2022 by which the 1st Respondent had deployed the Claimant to a new department recalled and cancelled. The parties asked the court to determine the question of costs of the proceedings.
2. The Claimant takes the view that it is the Respondents' actions that triggered the suit. She argues that she incurred expense in prosecuting the suit. Therefore, she is entitled to recover costs from the party whose conduct necessitated the action.
3. On their part, the Respondents argue that since the matter was compromised by consent of the parties, each party should bear his or her own costs. According to the Respondents, the fact that the parties agreed to record a consent settling the dispute underscores the reality that neither of them can be



described as “the successful party”. In the premises, the court cannot invoke the dictum that costs follow the event to order costs in favour of the Claimant.

4. The Respondents rely on the decision of *Rufus Njuguna Miringu & another v Martha Muriithi & 2 others* [2012] eKLR to advance their argument that since the dispute between the parties was resolved through amicable settlement, each one should shoulder his or her costs of the suit. They also rely on the decision in *David Kiptum Korir v Kenya Commercial Bank & another* [2021] eKLR on the same point.
5. As correctly observed by both parties, the question whether costs ought to be awarded in a suit and by whom such costs, if granted, should be paid is usually left to the court’s discretion. Indeed, this is the effect of section 27 of the *Civil Procedure Act*.
6. The fact that the court has power to determine whether and by whom costs should be paid does not grant it the power to decide on the issue arbitrarily. The court is required to be guided by the generally settled principles on the matter.
7. One of these principles is that costs ordinarily follow the event. Except for good reasons, costs of a suit ought to be granted to the successful party. The court has no right to whimsically deprive the successful party of the costs of the action. Refusal to grant the successful party costs must be only for cogent reasons.
8. Although the Respondent relies on the decision in *Rufus Njuguna Miringu & another v Martha Muriithi & 2 others* to advance the argument that where a matter has been resolved amicably, each party should bear own costs, this is by no means a rule of general application. Notwithstanding that parties to a dispute have recorded a settlement, the question whether to award costs in the cause is one that must be determined having regard to the peculiar circumstances of the case. Indeed, this is the position that is expressed in *David Kiptum Korir v Kenya Commercial Bank & another* [2021] eKLR and *Morgan Air Cargo Limited v Everest Enterprises Limited* [2014] eKLR.
9. I have considered the Claimant’s prayer for costs with the foregoing principles in mind. I note that the reason why the Claimant filed this action was to resist her deployment to a new department which was communicated through the 1st Respondent’s letter dated July 29, 2022. It was the Claimant’s contention that the said deployment was irregular.
10. The record shows that alongside the Memorandum of Claim, the Claimant filed an application for interim orders to restrain the Respondents from implementing their decision. She was successful on the said application and was granted costs.
11. Subsequent to the foregoing, the parties entered into discussions on the matter. It would appear that the said discussions yielded an agreement that saw the 1st Respondent cancel the impugned decision to deploy the Claimant.
12. To my mind, the effect of the settlement was that the Claimant became the successful party. She had moved to court to challenge her deployment to a new department which the Respondents eventually agreed to reverse.
13. Following the principle that costs follow the event, it is my humble view that the costs in this cause are due to the Claimant being the successful party in the action. Absent cogent reasons why I should deny her an order for costs, I am duty bound to grant the Claimant costs of the action.
14. In any event, the record shows that I had granted the Claimant costs of the application for interim orders. Therefore, to issue a subsequent order disentitling her to costs generally would be tantamount



to reversing my earlier order on costs in her favour, albeit for the application. With respect, I do not think that it is proper to do so without an application for review put before me.

Determination

15. The upshot is that I grant the Claimant costs of the action.

DATED, SIGNED AND DELIVERED ON THE 31ST DAY OF JULY, 2023

B. O. M. MANANI

JUDGE

In the presence of:

..... for the Claimant

.....for the Respondents

.....for the Interested Parties

ORDER

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M MANANI

