



Bonechi v Italian Agency for Cooperation & Development (Cause E922 of 2022) [2023] KEELRC 1800 (KLR) (27 July 2023) (Ruling)

Neutral citation: [2023] KEELRC 1800 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E922 OF 2022**

**L NDOLO, J
JULY 27, 2023**

BETWEEN

DR DAVIDE GRAZIANO BONECHI CLAIMANT

AND

ITALIAN AGENCY FOR COOPERATION & DEVELOPMENT .. RESPONDENT

RULING

1. At a court appearance on February 20, 2022, the attention of the court was drawn to a notice of withdrawal of claim dated February 17, 2023 filed by the claimant.
2. While the respondent was not opposed to the withdrawal of the claim, there was no agreement between the parties on the issue of costs.
3. On April 12, 2023, I directed the parties to file submissions on the issue of costs. Only the respondent complied with these directions.
4. The single issue for determination in this application is whether the respondent is entitled to costs pursuant to the withdrawal of the claim by the claimant.
5. In its submissions dated May 26, 2023, the respondent relied heavily on the *Civil Procedure Act*. However, under section 12(4) of the *Employment and Labour Relations Court Act*, the court retains discretion to make appropriate orders as to costs.
6. In employment matters, costs are not automatic and ought to be avoided where an unnecessary burden would result to either party.
7. I am persuaded that the decision to withdraw the matter was made in good faith and there was nothing to suggest that the claimant was a vexatious litigant.



8. In the result, I will exercise discretion in favour of the claimant and direct that each party will bear their own costs.
9. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 27TH DAY OF JULY 2023.

LINNET NDOLO

JUDGE

