



**Kereu v Style Industries Limited (Cause 948 of 2018)
[2022] KEELRC 3883 (KLR) (2 September 2022) (Ruling)**

Neutral citation: [2022] KEELRC 3883 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 948 OF 2018
SC RUTTO, J
SEPTEMBER 2, 2022**

BETWEEN

DANIEL SOBERA KEREU CLAIMANT

AND

STYLE INDUSTRIES LIMITED RESPONDENT

RULING

1. This matter only comes up for determination before me on the issue of costs. On May 9, 2022, the parties' legal representatives informed the Court that they had settled the matter through mediation and the only outstanding issue was costs.
2. By and large, the rest of the claim which revolved around unfair termination was settled out of court. As per the mediation report dated December 7, 2021, the parties recorded a settlement in favour of the claimant which was in the sum of Kshs 45,096.00 being damages equivalent to three months of his salary at the material time.
3. Following adoption of the mediation report, the court directed parties to file their respective submissions in respect of costs. The claimant complied and although counsel for the respondent, promised to file their submissions within 7 days from June 13, 2022, none were filed.
4. The claimant submitted that he had incurred costs since the filing of the suit. He cited the dates he had attended court for mention as well as mediation. It was the claimant's further submission that being the successful party in the mediation, he is entitled to the costs of the suit. He urged that costs follow the event. In support of this position, the claimant cited the case of *Orix (K) Limited v Paul Karuru Ngayu and 2 others* [2014] eKLR.



5. Evidently, the main issue for determination is which party should bear the costs of the suit. Section 27 of the [Civil Procedure Act](#) is key hence I will reproduce the same as hereunder: -

“[27](1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and give all the necessary directions for the purposes aforesaid; and the fact that the court has no jurisdiction to try the suit shall be no bar to the exercise of those powers; provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise direct.”

6. This position was amplified in [Republic v Rosemary Wairimu Munene, Ex-Parte Applicant v Ibururu Dairy Farmers Co-operative Society Ltd](#) as follows: -

“The issue of costs is the discretion of the court as provided under the above section. The basic rule on attribution of costs is that costs follow the event..... It is well recognized that the principle costs follow the event is not to be used to penalize the losing party; rather it is for compensating the successful party for the trouble taken in prosecuting or defending the case.”

7. As regards the word “event”, Justice (Rtd) Kuloba defines the same in his literary work [Judicial hints on Civil Procedure](#) to mean: -

“The words “the event” mean the result of all the proceedings to the litigation. The event is the result of entire litigation. It is clear however, that the word “event” is to be regarded as a collective noun and is to be read distinctively so that in fact it may mean the “events” of separate issues in an action. Thus the expression “the costs shall follow the event” means that the party who on the whole succeeds in the action gets the general costs of the action, but that, where the action involves separate issues, whether arising under different causes of action or under one cause of action, the costs of any particular issue go to the party who succeeds upon it. An issue in this sense need not go to the whole cause of action, but includes any issue which has a direct and definite even in defeating the claim to judgment in the whole or in part”.

8. As stated herein, this matter was settled by agreement of the parties during mediation. In the case of [David Kiptum Korir v Kenya Commercial Bank & another](#) [2021] eKLR, the court had this to say on the issue of costs in regards to matters settled by consent: -

“30. As such, the settlement of a matter whether by consent or otherwise, is not a bar to costs. In addition, settlement of a case by consent does not necessarily mean there is no successful party.”

9. I am further guided by the determination in [Morgan Air Cargo Limited v Everest Enterprises Limited](#) [2014] eKLR, where the learned judge reckoned thus: -

“But it does not necessarily mean that, where parties have entered into consent to settle a proceeding, no costs should be awarded, or there is no successful party in the matter. The incidence of settlement by consent of the parties, to my mind, is just but a vital factor the



court should consider, within the circumstances of each case, in deciding whether costs are payable or not. A consent recorded in settlement of a proceeding is not an automatic disentitlement of costs and I, would, therefore, hesitate profoundly to make any generalized propositions on the law that consent is an automatic disentitlement of costs without reference to the context of the particular case...It should also be understood well; that a successful party does not refer to a person who has been taken through rigorous and convoluted motions of litigation by the other party. Similarly, a party does not cease to be a successful party merely because he met little or no contest in his claim against the defendant. He is a successful party because he is declared so by the court after looking at the result of the entire litigation, which includes; negotiations or steps which culminates to, and the recording of a consent thereto, conduct of the plaintiff etc. On that basis I believe settlement of a case by consent of the parties should be one of the factors the court should consider in deciding whether or not costs should be awarded to the successful party.” Underlined for emphasis

10. Seeing that the parties failed to agree on the issue of costs and left it to the court, I have to exercise my discretion.
11. As stated herein, the crux of the dispute was unfair termination. Following negotiations, the ensuing settlement was in favour of the claimant who was awarded damages equivalent to three months’ salary. Applying the determination in *Morgan Air Cargo Limited vs Everest Enterprises Limited* (*supra*), it can only be inferred that the claimant was the successful party in the entire dispute. I have not discerned any conduct on the part of the claimant that would disentitle him to costs. This is coupled with the fact that the damages awarded to the claimant are modest.
12. In light of the foregoing, the claimant is awarded costs as shall be taxed by the Deputy Registrar of the court.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 2ND DAY OF SEPTEMBER, 2022.

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STELLA RUTTO

JUDGE

Appearance:

For the claimant Ms Alividsa

For the respondent Ms Obonyo

Court Assistant Abdimalik Hussein

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 March 15, 2020 and subsequent directions of April 21, 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

