



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

CAUSE NO. 1281 OF 2016

KENYA CONCRETE STRUCTURAL CERAMIC TILES

WOOD PLY AND DESIGN WORKERS UNION.....1ST CLAIMANT

DISHON ANGOYA MATANGA.....2ND CLAIMANT

SIMON MATEI.....3RD CLAIMANT

NAOMI S. MULI.....4TH CLAIMANT

CHRISTOPHER MUYELA.....5TH CLAIMANT

ALEX S. MACHAFU.....6TH CLAIMANT

MARY WAITHAKA KAMAU.....7TH CLAIMANT

DISHON O. TINDI.....8TH CLAIMANT

JOSEPH ODERO.....9TH CLAIMANT

EVANS OMENDO.....10TH CLAIMANT

JOSEPH MUTISO.....11TH CLAIMANT

VERSUS

THE REGISTRAR OF TRADE UNIONS.....1ST RESPONDENT

DANIEL IRUNGU KAMAU.....2ND RESPONDENT

JOSEPHINE N. NDUNGU.....3RD RESPONDENT

EVANS AMWANZO.....4TH RESPONDENT

SAMUEL CIIRA KIBIRO.....5TH RESPONDENT

RULING

1. This suit was on 22nd March, 2021 withdrawn by the claimants on the basis that the substratum of the suit had been overtaken by events it being an election dispute.

2. The notice of withdrawal is not opposed by the respondents except that the 2nd to 5th respondents sought costs of the suit. The 1st respondent submitted that it had no interest in the matter of costs.

3. It is common cause from the submissions that costs are awarded at the discretion of the Court which discretion must be exercised in a judicial manner.
4. In terms of Section 27 of Civil Procedure Act, and as a matter of general principle costs follow the event unless for good reason the Court deems the costs not payable.
5. In the present matter, the suit was withdrawn not because it lacked merit in the first place but because of reasons not the making of the claimant in that the suit could not be heard and determined timeously by the Court and therefore has become moot.
6. There are no facts presented by the 2nd to 5th respondents to show the above is not the case to warrant any of the parties to shoulder the blame for the delay in prosecution of the suit.
7. The Court is well guided by the decision of Mativo J. in **Cecilia Karuru Ngayu –vs- Barclays Bank of Kenya and Another [2016] eKLR**.
8. The Court has also considered the provision of Section 12(4) of the Employment and Labour Relations Court Act and the Court of Appeal decision in **Alfred Muindi –vs- Rift Valley Railways Limited [2015] eKLR** where the court stated-

“Under Section 12(4) of the Employment and Labour Relations Court Act, it is provided that “in proceedings under this Act, the Court may, subject to the rules, make such orders as to costs as the Court considers just.” The couching of the provisions gives the trial Court discretionary powers to award costs or not.”

9. Having considered all the circumstances of this case which has been voluntarily withdrawn by the claimants for reasons which appear to have been beyond their control, the Court declines to make an award of costs in the matter.
10. Accordingly each of the parties in the suit to bear their own costs of the withdrawn suit.

DATED AND DELIVERED AT NAIROBI THIS 22ND DAY OF JULY, 2021.

MATHEWS N. NDUMA

JUDGE

ORDER

*In view of the declaration of measures restricting court of operations due to the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15th March 2020, this ruling has been delivered to the parties online with their consent. 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 has 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 18 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.*

MATHEWS N. NDUMA

JUDGE

Appearances

Mr. Macharia for 2nd to 5th Respondents

Mr. Odukenya for 1st respondent

Ekale – Court clerk