



**Shiloah Investment Limited v Postal Corporation of Kenya (Civil Suit  
9 of 2019) [2025] KEHC 2717 (KLR) (27 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2717 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
CIVIL SUIT 9 OF 2019  
MS SHARIFF, J  
FEBRUARY 27, 2025**

**BETWEEN**

**SHILOAH INVESTMENT LIMITED ..... APPLICANT**

**AND**

**POSTAL CORPORATION OF KENYA ..... RESPONDENT**

**RULING**

1. *Vide* the ruling issued by this Court under the guidance of my esteemed colleague T.W. Cherere J. on 12<sup>th</sup> August 2020, the Court granted the application to the extent of entering an interlocutory judgement on admission in favour of the Applicant/Plaintiff herein against the Respondent/Defendant in the sum of Kshs. 25,492,470/= together with interest and costs.
2. On 29<sup>th</sup> May 2023, this Court issued orders that the Plaintiff's Notice of Motion application dated 17<sup>th</sup> May 2023, be allowed and that the Plaintiff proceed to file and serve the Amended Plaint within 7 days from the date thereof.
3. On consensus both parties to the suit agreed to have the judgement entered against the Respondent/Defendant herein for a sum of Kshs. 26,586,715/= and the same was adopted by this Court as a consent judgement on 27<sup>th</sup> July 2023.
4. On 24<sup>th</sup> October 2023, the parties established that after a reconciliation of accounts the Respondent/Defendant herein was to pay an additional Kshs. 26,586,715/= which was adopted by the parties and this Court as a consent judgement. Parties were unable to agree on the mode of payment of the amount and costs payable to the Applicant/Plaintiff herein, and sought the involvement of this Court.
5. *Vide* directions issued by this Court on 1<sup>st</sup> November 2023, the parties were ordered to canvass the issue of costs by way of written submissions. Both parties complied.



6. In a nutshell, the Applicant/Plaintiff submitted that pursuant to Section 27 of the *Civil Procedure Act* award of costs is discretionary in nature and that it should follow event. Also, if the Court intends to exercise its discretion and depart from the norm then the judge ought for a good reason do so. Counsel relying on the case of *Jasbir Singh Rai & 3 Others vs Tarlochan Singh Rai & 4 Others*, SC Petition No. 4 of 2012 (2024) eKLR submitted that the award of costs is normally guided by the principle that costs follow the event and in the instant case there exists no good reason why the cost should not follow the event. Counsel argued that the Applicant/Plaintiff was successful in its suit despite the Respondent/Defendant's denial. Furthermore, the Respondent/Defendant only consented to judgement being entered after the Court looked at the evidence on record in the 1<sup>st</sup> instant and had entered judgement in favour of the Applicant/Plaintiff. Finally, counsel submitted that the conduct of the Respondent/Defendant should truly prompt this Court to exercise its discretion and allow costs to follow event. Counsel referred this Court to Rule 26 of the *Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013*.
7. Opposing the Applicant/Plaintiff's submissions, the Respondent/Defendant relying on Rule 26 of the *Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013*; Section 27 of the *Civil Procedure Act* and the cases of: *Devram Manji Daltani vs Danda* (1949) 16 EACA 35, *Jasbir Singh Rai & 3 Others vs Tarlochan Singh Rai & 4 Others*, SC Petition No. 4 of 2012 (2024) eKLR and *Farah Awad Gullet Vs CMC Motors Group Ltd* (2017) eKLR, submitted that costs are awarded to compensate a successful litigant and not to punish an unsuccessful litigant. Subsequently, the conduct of the Applicant/Plaintiff does not merit an award of costs. According to counsel, the Applicant/Plaintiff amended its Plaint by revising downwards its claim for damages to as near a sum as that admitted in the letter dated 31<sup>st</sup> October 2018 as well as the ruling of the Court delivered on 12<sup>th</sup> August 2020, while abandoning all its other prayers save for costs and interest.
8. Counsel submitted that this Court ought not to exercise its discretion in favour of the Applicant/Plaintiff by awarding any other costs beyond what was awarded in the ruling of the Court delivered on 12<sup>th</sup> October 2020.
9. Analysis and determination
10. The award of costs is governed by the principle that costs follow the event, as established in Section 27 of the *Civil Procedure Act*, Cap 21 of the Laws of Kenya. This principle means that the party who is successful in the litigation is generally entitled to recover their costs from the unsuccessful party.
11. In the case of *Party of Independent Candidate of Kenya & another vs Mutula Kilonzo & 2 others* (2013) eKLR which cited with approval the words of Murray C J in *Leoben Products vs Alexander Films* (SA) (PTY) Ltd 1957 (4) SA 225 (SR) at 227 that it stated:
 

“It is clear from authorities that the fundamental principle underling the award of costs is two-fold. In the first place the award of costs is matter in which the trial Judge is given discretion ...But this is a judicial discretion and must be exercised upon grounds on which a reasonable man could have come to the conclusion arrived at....In the second place the general rule that costs should be awarded to the successful party, a rule which should not be departed from without the exercise of good grounds for doing so.”
12. In *Republic v. Rosemary Wairimu Munene (Ex parte Applicant) v. Ibururu Dairy Farmers Co-operative Society Ltd* Judicial Review Application No. 6 of 2004 Mativo J. held that the issue of costs is the discretion of the Court and is used to compensate the successful party for the trouble taken in



prosecuting or defending the case and not to penalize the losing party. This position was adopted by the Court in *Cecilia Karuru Ngayu vs. Barclays Bank of Kenya & Another* [2016] eKLR.

13. The Court must therefore ask itself what factors should be taken into consideration when determining the costs of suit. This issue was addressed by the learned judge in *Morgan Air Cargo Limited v Everest Enterprises Limited* [2014] eKLR to include:
  - a. the conduct of the parties
  - b. the subject of litigation
  - c. the circumstances which led to the institution of the proceedings
  - d. the events which eventually led to their termination
  - e. the stage at which the proceedings were terminated
  - f. the manner in which they were terminated
  - g. the relationship between the parties and
  - h. The need to promote reconciliation amongst the disputing parties pursuant to Article 159 (2) (c) of the *Constitution*.
14. Noteworthy, the list is not exhaustive. In other words, the Court must be guided not only by the conduct of the parties in the actual litigation, but also other matters including likely consequences of the order for costs.
15. This Court takes cognizance of the judgement entered by consent in favour of the Applicant/Plaintiff against the Defendant in the sum of Kshs. 26,586,715/= with interest. While applying the principle in Jasbir Singh Rai case that costs normally follow the event, has an event to which costs would follow materialized? The answer is in the positive. The Applicant/Plaintiff proclaim the status of a victor thus the successful party in terms of the provisions of Section 27 of the *Civil Procedure Act*.
16. The Respondent/Defendant has not shown any cause why it should deny the victor the costs. Thus, this Court in exercise of its discretion finds that the Applicant/Plaintiff labored much in the matter by ensuring a proper reconciliation of accounts with the Respondent/Defendant to establish the pending Kshs. 26, 627,127/=. The Court will award costs the plaintiff costs of this suit. The plaintiff is at liberty to take the same in the event that an agreement is not reached by the parties on the quantum of costs.
17. This file is hereby marked as closed

**DATED AND DELIVERED AT BUNGOMA THIS 27<sup>TH</sup> DAY OF FEBRUARY 2025.**

**Shariff Mwanaisha Saida**

**Judge**

In the presence of :

N/A for Applicant/Plaintiff

N/A for Respondent/Defendant

Diana Court Assistant

