



**Thambu v Yetu Sacco Society Limited & another (Constitutional Petition
E003 of 2024) [2025] KEHC 2760 (KLR) (27 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2760 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CONSTITUTIONAL PETITION E003 OF 2024
HM NYAGA, J
FEBRUARY 27, 2025**

BETWEEN

FREDRICK THAMBU PETITIONER

AND

YETU SACCO SOCIETY LIMITED 1ST RESPONDENT

ZAVERIO KIRIMI 2ND RESPONDENT

RULING

1. The only issue that is outstanding is on costs of the petition after its withdrawal by the Petitioner.
2. Section 27 of the *civil Procedure Act* provides as follows as regards costs.

‘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 to give all necessary directions for the purposes aforesaid; and the fact that the court or judge 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 order.

3. The court or judge may give interest on costs at any rate not exceeding fourteen per cent per annum, and such interest shall be added to the costs and shall be recoverable as such.”
4. There is no dispute that the court has the discretion as regards awards on costs.



5. Counsel for the Respondent urges it to award it costs, while counsel for the Petitioner urges the Court to let each party bear its costs. This latter's argument is that this is a public Interest litigation matter and as such the court ought to refrain from punishing the Petitioner with costs.
6. There are a number of authorities addressing the question of whether a successful party should be awarded costs or not. For instance, in *Cecilia Karuru Ngayu vs Barclays Bank of Kenya and Another* (2016) eKLR, the court cited the factors to be considered when determining the question of costs. The court held that:-

“To my mind, in determining the issue of costs, the court is entitled to look at inter alia

- (i) the conduct of the parties,
- (ii) the subject of litigation,
- (iii) the circumstances which led to the institution of the proceedings,
- (iv) the events which eventually led to their termination,
- (v) the stage at which the proceedings were terminated,
- (vi) the manner in which they were terminated,
- (vii) the relationship between the parties and
- (viii) the need to promote reconciliation amongst the disputing parties pursuant to Article 159 (2) (c) of *the Constitution*.^[11] In other wards the court may not only consider the conduct of the party in the actual litigation, but the matters which led to the litigation, the eventual termination thereof and the likely consequences of the order for costs.”

7. To depart from the room that costs follow the event, good reasons ought to be adduced. Thus, was so held in *Jasbir Singh Rai & Others vs Tarlochan Rai & Others* {2014} eKLR where it was observed that:

“In the classic common law style, the courts have to proceed on a case by case basis, to identify “good reasons” for such a departure. An examination of evolving practices on this question shows that, as an example, matters in the domain of public interest litigation tend to be exempted from award of costs.”

8. Is this really a public interest litigation suit as alleged by the Petitioner?
9. Public Interest Litigation was described by the Supreme court in *Mumo Matemu vs Trusted Society of Human Rights and 5 others* [2014] eKLR as follows:-

“Public Interest Litigation plays a transformative role in society. It allows various issues affecting the various spheres of society to be presented for litigation. This was *the Constitution*'s aim in enlarging locus standi in human rights and constitutional litigation. Locus standi has a close nexus to the right of access to justice. In instances where claims in the interest of the public are threatened by administrative action to the detriment of constitutional interpretation and application, the Court has discretion on a case by case basis, to evaluate the terms and public nature of the matter vis a vis the status of the parties before it. This discretion is drawn from the command of Article 259 (1), to interpret *the Constitution* in a manner that promotes its values and purposes, advances the rule of



law, human rights and fundamental freedoms, permits the development of the law and contributes to good governance”.

10. The matter herein involved elections in the 1st Respondent. The Petitioner came to court due to alleged lack of transparency. His ambitions were personal and do not amount to public interest litigation. That said, I think that he was entitled to clarity from the 1st Respondent over the intended repeat elections, since no information was forthcoming.
11. Given the circumstances of the case. I think that it is only fair that as between the Petitioner and the 1st Respondent, each party bears its own costs.
12. The 2nd Respondent did not participate, so I make similar orders as to costs.

SIGNED, DATED AND DELIVERED AT MERU THIS 27TH DAY OF FEBRUARY 2025

H.M. NYAGA

JUDGE

