



REPUBLIC OF KENYA



KENYA LAW
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**Kimoni v Shalaho (Civil Case 10 of 2017)
[2025] KEHC 3949 (KLR) (Civ) (26 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 3949 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL CASE 10 OF 2017

SN MUTUKU, J

FEBRUARY 26, 2025

BETWEEN

BONIFACE MUSYOKA KIMONI PLAINTIFF

AND

CYPRIAN SHALAHU DEFENDANT

RULING

1. The singular issue for determination is on costs: to whom are costs payable?
2. The claim against the Defendants was filed through a Plaint dated 17th January 2017. It was served on the Defendants who entered appearance through a Memorandum of Appearance dated 9th October 2017 and filed on 10th October 2017. On 17th November 2017, the Plaintiff filed a Request for Judgment pursuant to Order 10 Rule 6 of the Civil Procedure Rules.
3. The Court entered an interlocutory judgment on the 23rd November 2017. The court directed that the award of costs should await the determination of the matter after formal proof proceedings. On 29th June 2018, the Court fixed the matter for mention on 8th October 2018. During that date, the matter was certified ready for formal proof.
4. It seems that from 8th October 2018 to 4th November 2021, no action was taken in the file. The Court dismissed the suit for want of prosecution after issuing Notice to Show Cause and the Plaintiff having failed to take action. However, the Court failed to pronounce itself on costs.
5. This matter was placed before me on 24th February 2025 to determine the issue of costs. Mr. Muyundo for the Defendant informed the court that the Defendants had filed Bill of Costs before they realized that there was no order for payment of costs. He stated that costs follow the event and that in this case, costs should be awarded to the Defendant.



6. Mr. Mwangi for the Plaintiff argued that this matter was dismissed for want of prosecution after the Plaintiff failed to prosecute the matter through formal proof; that the court suo motu, dismissed the matter and therefore the file should be closed with no order as to costs. Counsel further stated that the Bill of Costs was prematurely filed.
7. I have considered the matter. The Court, in dismissing the suit for want of prosecution, did not state whether costs were payable and to whom.
8. Section 27 of the Civil Procedure Act provides as follows on the issue of costs:
 27. Costs
 - (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 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.
 - (2) 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.
9. There is clarity in the above provision that the powers of the court to award costs is discretionary. The proviso to Section 27 is that costs follow the event unless the court, for good reason, orders otherwise. The discretion of the court must be exercised judiciously (see Uganda in *Impressa Ing Fortunato Federice vs Nabwire* {2001} 2 EA 383)
10. I have noted that the Defendants entered the appearance but failed to file Statement of Defence. That failure led to the interlocutory judgment.
11. The event referred to in section 27 CPC regarding this case is the dismissal of the suit for want of prosecution. The Plaintiff brought this suit against the Defendants who are the successful parties who benefitted from the dismissal. It would mean, therefore, that costs are payable to them.
12. I have noted that court attendances are not many for both the Plaintiffs and the Defendants. In this case, the Taxing Officer will be able to address that issue during taxation.
13. I award costs to the Defendants. The Defendants are free to file their Bill of Costs for taxation purposes. Orders shall issue accordingly.

DATED, SIGNED AND DELIVERED 26TH FEBRUARY 2025.

S. N. MUTUKU

JUDGE

