



REPUBLIC OF KENYA



KENYA LAW
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**Njamumo v Mwobe (Miscellaneous Civil Application 66 of 2019)
[2025] KEHC 3938 (KLR) (27 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3938 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
MISCELLANEOUS CIVIL APPLICATION 66 OF 2019**

EM MURIITHI, J

MARCH 27, 2025

BETWEEN

JENARO NAMU NJAMUMO APPLICANT

AND

JAMES KINYUA MWOBE RESPONDENT

RULING

1. The applicant filed a Notice of Motion dated 25th September, 2020 seeking the following orders:
 1. That the Honourable Court do grant the Respondent the costs of the application herein seeking stay of proceedings in Kerugoya CMCC No 139 of 2018 pending the hearing and determination of his Criminal Appeal No 40 of 2018 in respect of which the ruling was delivered on 27th February, 2020 but was silent on the issue of costs.
 2. That the costs of this application be awarded to the Respondent/Applicant.
2. The application is based on the grounds on the face of the application and the supporting affidavit of applicant. The applicant's case is that the application was dismissed for lack of merit on 27th February, 2020 but the ruling dismissing the same was silent on the issue of costs most probably due to oversight, slip or omission on the part of the court. That this Honourable Court has jurisdiction to consider the issue of costs and make orders on the same.
3. The respondent opposed the application on 15th October, 2020 on the grounds that the application is without merit and a gross abuse of the due process of the court and that under section 27 of the *Civil Procedure Act*, awarding costs is a matter of discretion of the court. The court, therefore, acted properly and legally in not awarding costs to the applicant who was the respondent in the main application.



Respondent/applicant submissions

4. They submit that the Court would be justified in exercising its unfettered discretion in granting their application as prayed by invoking its inherent jurisdiction and discretion granted by sections 3A, 27 and 99 of the *Civil Procedure Act*, Cap 21.

Applicant/Respondent's submissions

5. The applicant submit the applicant in the main application should not pay costs for the that even though the applicant's application was dismissed, the same had been brought in good faith and it was well within the court's discretion to avoid awarding costs. Costs are not a means for punishing a losing side in litigation, however, it functions as a tool to prevent litigants from dragging each other into unnecessary litigation. There has been no such allegation raised that the applicant had approached court unnecessarily or in bad faith.
6. That the court when exercising its discretion whether or not to award costs will usually look at the circumstances that led to the suit. In this case, the applicant was seeking to stay proceedings in a lower court pending the hearing and determination of an appeal, the application filed was therefore miscellaneous, it was imperative the applicant filed it as it was absolutely necessary.
7. The Court is fully clothed with the discretion as to how to meet costs. The respondent now applying to the court to give directions on costs again, deliberately hampers the court's ability to exercise its unfettered judicial discretion.

Issue

8. The issue before the court is whether the applicant should be awarded costs.

Analysis

9. The applicant herein seeks costs for application dated 23rd September, 2019 stay of proceedings in Kerugoya CMCC No 139 of 2018 pending the hearing and determination of his Criminal Appeal No 40 of 2018 in respect of which the ruling was delivered on 27th February, 2020 but was silent on the issue of costs.
10. Section 27 of the *Civil Procedure Act* grants the High Court discretionary power in the award of costs which ordinarily follow the event unless the Court for good reasons orders otherwise. Section 27 (1) of the *Civil Procedure Act* provides as follows:-
 - “(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.”
11. The applicant/respondent depose that he had prayed for costs in the application dated 23rd September, 2019. The court failed to award the costs due to an oversight. It was submitted that the court when exercising its discretion whether or not to award costs will usually look at the circumstances that led to



the suit. In this case, the applicant was seeking to stay proceedings in a lower court pending the hearing and determination of an appeal.

12. I respectfully agree with decision of the Court of Appeal in *Supermarine Handling Services Ltd v Kenya Revenue Authority* [2010] eKLR where the Court said:

“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. See Section 27 (1) of the *Civil Procedure Act*.

In the case *Devram Dattan v Dawda* [1949] EACA 35 it was held,

“It is well established that when the decision of such a matter as the right of a successful litigant to recover his costs is left to the discretion of the Judge who tried his case, that discretion is a judicial discretion, and if it be so its exercise must be based on facts....If, however, there be, in fact, some grounds to support the exercise by the trial Judge of the discretion he purports to exercise, the question of the sufficiency of those grounds for this purpose is entirely a matter for the Judge himself to decide, and the Court of Appeal will not interfere with his discretion in that instance.”

Thus, where a trial court has exercised its discretion on costs, an appellate court should not interfere unless the discretion has been exercised unjudicially or on wrong principles. Where it gives no reason for its decision the Appellate Court will interfere if it is satisfied that the order is wrong. It will also interfere where reasons are given if it considers that those reasons do not constitute “good reason” within the meaning of the rule.”

13. In this case, the Court having decided the application in favour of the respondent but there is no reason on the record for the departure from the general rule that costs shall follow the event as to why it did not award costs to the Respondent. In the absence of a reason given for this departure from the rule, this Court is persuaded that the omission to award costs no reason was as urged by the applicant herein by inadvertence. There was no basis shown for depriving the successful respondents their costs where the general principle is that costs shall follow the event.

Orders

14. Consequently, the Respondents in the main application and applicants in this application shall be awarded costs of the applications in this suit.

Orders accordingly.

DATED AND DELIVERED THIS 27TH DAY OF MARCH 2025.

EDWARD M. MURIITHI

JUDGE

Appearances:

Ms. Wambui for the Applicants.

Mr. I. W. Muchiri for the Respondent.

