



**Ngugi v Mogo Auto Limited (Miscellaneous Application  
E019 of 2025) [2025] KEHC 11872 (KLR) (30 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11872 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
MISCELLANEOUS APPLICATION E019 OF 2025  
CM KARIUKI, J  
JULY 30, 2025**

**BETWEEN**

**RISPA NYANDIRI NGUGI ..... APPLICANT**

**AND**

**MOGO AUTO LIMITED ..... RESPONDENT**

**RULING**

**Background**

1. The matter relates to the award of the party and party Costs of bringing the Miscellaneous Application dated 10<sup>th</sup> January 2025 filed by the Applicant herein. Following the consent of the parties on 3<sup>rd</sup> June 2025, the Respondent agreed to harmonize the Applicant's loan account and have the outstanding arrears of the Applicant computed in Kenyan shillings as per the directive of the Competition Authority of Kenya dated 4<sup>th</sup> October 2024.
2. In the said directive, the CAK, a regulatory body overseeing competition and consumer protection in Kenya, instructed the Respondent that all its loan instalment calculations issued to its borrowers should be in Kenyan shillings. That loan arrears should be paid in Kenyan shillings to protect borrowers from higher instalment payments.
3. The matter was canvassed via submissions.

**Applicant 's Submissions**

4. The applicants submit on the following issues, namely: (i) Whether the Applicant is entitled to costs of this Application, (ii) What amount of costs should be assessed?



**a. Whether the Applicant is entitled to costs**

5. It is submitted that. It is trite that costs follow the event, and a successful litigant is entitled to costs of the suit, subject to the Court's discretion. This is well articulated under Section 27 of the *Civil Procedure Act*, 2010. The Court's discretion, a cornerstone of our judicial system, was exercised in this case. Further, the Court in *Supermarine Handling Services Ltd vs Kenya Revenue Authority*, Civil Appeal No. 85 of 2006, while quoting with approval *Devram Dattan v Dawda* [1949] EACA 35, held that:

“Costs of any action or other matter or issue shall follow the event unless the Court or Judge shall, for good reason, otherwise order. 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.”

6. It is argued that the Applicant herein moved this Court primarily seeking a determination of whether the Respondent should be directed to immediately regularize the loan agreement between the Applicant and the Respondent. The Respondent's loan account is to reflect the loan repayments and instalments in Kenya Shillings, in compliance with the directive issued by the Competition Authority of Kenya (CAK). Initially, the Respondent denied the Applicant's prayer in its replying affidavit; however, during the court mention on 3<sup>rd</sup> June 2025, after thorough consideration, it agreed to make the loan arrears and repayments of the Respondent into Kenyan Shillings. Essentially, it conceded to the Applicant's prayer in its Application.

7. The Applicant contends that the Respondent acted in bad faith by computing the Applicant's loan arrears and repayments in US dollars, contrary to the earlier advised use of Kenyan Currency. Thus, Applicant urges the Court to be persuaded by the holding in *Haraf Traders Limited v Narok County Government* [2022], which held that:

“As stated above, in cases where the parties enter into a consent, the Court does not go further to inquire the reasons for the consent or dig into the reasons why the plaintiff seeks to resolve the matter with the defendant, nor can an adverse inference be made against the plaintiff while determining costs. The only relevant issue is whether or not the plaintiff is entitled to costs given the event of the suit in light of lawful steps taken in pursuit of a remedy.”

8. Further, the consent entered into by the parties is in favour of the Applicant Applicant, as such the Applicant Applicant ought to be considered as the successful party. Thus, Applicant prays that the Court's discretion be exercised in favour of the Applicant by awarding costs to it.

**What amount of costs should be assessed?**

9. This matter was filed in the High Court. Therefore, the applicable schedule is Schedule 6 of the Advocates Remuneration Order (ARO 2014), which provides for Costs of proceedings in the High Court. The relevant costs that should be awarded fall under the stated heads below:



### **a. Instructions Fees**

10. This matter having been settled prior to entry of judgment and/or ruling of this Court, the value of the subject matter ought to guide the Court in assessing the costs payable to a successful party. We rely on the decision in *Peter Muthoka & another v Ochieng & 3 others* [2019] eKLR, where it was held:

“It seems to us quite plain that the basis for determining subject matter value for purposes of instruction fees is wholly dependent on the stage at which the fees are being taxed. Where it happens before judgment, it is the pleadings that form the basis for determining subject value.”

11. Further, the Applicant herein sought to have the Respondent regularize the payment of her loan facility, which was of Kshs. 600,000/=. As such, the value of the subject matter ought to be pegged at KShs. 600,000/=:, which was the loan amount given to the Applicant by the Respondent.
12. It is contended that the Respondent, having filed its replying Affidavit in defence /contesting the Applicant’s Application, the Applicable scale of fees falls under Paragraph 1(b) of Schedule 6 of the Advocates Remuneration Order, 2014, which relates to the costs of proceedings in the High Court where there is a defence. Applying the aforementioned scale, the applicable fee becomes KShs. 90,000/=:.

### **(b) Attendances**

13. The matter attracted two mentions of the suit herein on 20<sup>th</sup> February 2025 and 3<sup>rd</sup> June 2025. A hearing date has been scheduled for 17<sup>th</sup> June 2025. Thus, it is submitted that the applicable scale is Paragraph 7 of Schedule 6 of the ARO, 2014, which prescribes that for attendances that are for half an hour or less, the amount is Kshs. 1,900. Thus, for the three attendances, it is contended that the Applicant is entitled to be awarded Kshs. 5,700/= as costs for court attendance.

### **(c) Disbursements Filing fees**

14. It is contended that it is trite that disbursements have to be proven explicitly by way of vouchers and/or receipts. This was supported by the holding of the Court in *Kithi & Co. Advocates v Greenwoods Limited* [2024] eKLR, where it held that:

Moreover, this Court also noted in *Ngatia & Associates Advocates V Interactive Gaming & Lotteries Limited*, [2017] eKLR, that disbursements are a refund for expenses which an advocate spends towards the preparation and in the course of representation of the client. For an advocate to receive the reimbursement, evidence of expenditure must be provided to the taxing officer by way of receipts.

15. From the court receipts annexed to the submissions herein, it is clear that the Applicant spent Kenya shillings Five Thousand (Kshs. 5,000/=) as court fees. Therefore, the Applicant requests reimbursement of the costs.

### **Process service**

16. Further, the Applicant submits that the service was effected upon the Respondent, whose offices are within three (3) Kilometers of this Court, as such Paragraph 9 of Schedule 6 of ARO, 2014 is applicable, and the costs for such distance are Kshs. 1,400/=: . Therefore, we pray that the said amount be reimbursed to her, as proved.



## **Making Copies**

17. Further, it is submitted that there are miscellaneous expenses associated with making copies of the Application herein. The said Application has 21 pages, thus applying Kshs. 25/= for each folio/page as provided for under Paragraph 5 of Schedule 6 of the ARO,2014, the costs awardable to the Applicant for copies are Kshs 525/=.

## **(d) Perusals.**

18. The Applicant's advocate also had to peruse the Respondent's Replying Affidavit, sworn by one, Eric Omondi Onditi, that had a total of 18 pages. Thus, the Applicant submits that for perusing the Replying affidavit and the annexures therein, the Applicant ought to be awarded Kshs. 50/= for each folio/page; thus, the total costs awardable for perusing ought to be Kshs 900/=.
  - a. The said figure is backed by the provision of Paragraph 8 of Schedule 6 of the ARO,2014.

## **Conclusion**

19. In sum, the Applicant submits that by being the successful party to the suit herein, she ought to be awarded the costs of the suit herein. She sought to remedy an issue that the Respondent had negligently failed to comply with, i.e, the directive issued by the Competition Authority of Kenya. The Respondent had ignored the directive and computed the Applicant's loan in USD instead of Kenyan shillings as directed by CAK.
20. The Respondent defended the suit, and accordingly, the higher scale of the applicable schedule of the ARO, 2014, which is Schedule 6, ought to apply. As submitted hereinabove, applying the said scale to quantify the Instructions fees applicable, the Disbursements, Costs for attendances, making copies, and perusing, the Honourable Court should conclude that the Applicant is entitled to Kshs— 103,525/= as total costs of the suit.

## **Respondent 's Submissions**

21. The Respondent submits that the Applicant sought costs and the Respondent denied the same. The same is premised because the matter did not proceed to a hearing. The Respondent also made a response and complied with the Application made by the Applicant.
22. The advocate sought his costs of Kshs. \$ 50,000 is unfair, unreasonable, and high. This matter has been mentioned only twice in the Court, and virtually the same has been concluded.

## **Issue: Who Should Bear The Costs Of The Suit**

23. As provided by Section 27 of the *Civil Procedure Act*, costs are granted at the discretion of the Court, and the said discretion must be exercised judiciously.
24. The Court has discretion as to whether costs are payable by one party or another, the amount of the costs, and when they are to be paid. Where costs are in the discretion of the Court, a party has no right to costs unless and until the Court awards them to him/her, and the Court has an absolute and unfettered discretion to award or not to award them. This discretion must be exercised judicially. It must not be exercised arbitrarily but by reason and justice as expounded in Halsbury's Law of England.
25. The issue of costs is the discretion of the Court as provided by the law. The basic rule on attribution of costs is that costs follow the event. It is well recognized that the principle costs follow the event is not to be used to penalize the losing party; rather, it is for compensating the successful party for the



trouble taken in prosecuting or defending the case. This position was held in *In Republic vs Rosemary Wairimu Munene, Ex Parte Applicant Vs Ihururu Dairy Farmers Co-operative Society Ltd*, Judicial Review application no 6 of 2014 as cited with authority in *Cecilia Karuru Ngayu v Barclays Bank of Kenya & another* [2016] eKLR

26. The fundamental principle underlying the award of costs is two-fold. In the first place, the award of costs is a matter in which the trial Judge is given discretion and must be exercised upon grounds on which a reasonable man could conclude.
27. 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 reasonable grounds for doing so. ” This was expounded in *Levben Products VS Alexander Films (SA) (PTY)Ltd 1957 (4) SA 225 (SR)* at 227, as cited with authority in the case of *Party of Independent Candidate of Kenya vs Mutula Kilonzo & 2 others* (2013) eKLR.
28. The issue of costs is the discretion of the Court to be exercised depending on the peculiar circumstances of each case. Thus, the Court is urged to order that each party bear their costs.

### **Issues, Analysis, And Determination**

29. Upon reviewing the proceedings, pleadings, and submissions from the parties' advocates, the issue is whether the Applicant is entitled to costs in the instant matter. Is the above affirmative? What is the quantum?
30. The provisions of Section 27 of the CPA, which provides that: -(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. 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. Such interest shall be added to the costs and shall be recoverable as such."
31. 15. There is no dearth of authorities expounding on the above provision. The Court of Appeal in *Punchlines Limited v Joseph Mugo Kibaria & 10 others* [2018] eKLR discussed this provision at length, stating inter alia as follows: -"As for costs, the substantive law governing an award of costs is enshrined in section 27 of the [Civil Procedure Act](#) (CPA).
32. The High Court in the *Party of Independent Candidates of Kenya versus Mutula Kilonzo & 2 others*, HC EP No. 6 of 2013, had this to say on the issue of costs: "It is clear from the authorities that the fundamental principle underlying the award of costs is two-fold. In the first place, the award of costs is a matter in which the trial judge is given discretion .... However, this is a judicial discretion and must be exercised upon grounds on which a reasonable man could conclude. In the second place, the general rule that costs should be awarded to the successful party is a rule which should not be departed from without the demonstration of good grounds for doing so."
33. In *Richard Kuloba, Judicial Hints on Civil Procedure, 2nd Edition*, page at page 101, the author states as follows:-"The law of costs as courts in Kenya understand it, is this, that where a plaintiff comes to enforce a legal right and there has been no misconduct on his part-no omission or neglect, and no vexatious or oppressive conduct is attributed to him, which would induce the Court to deprive



him of his costs- the Court has no discretion and cannot take away the plaintiff's right of costs. Suppose the defendant, however innocently, has infringed a legal right of the plaintiff. In that case, the plaintiff is entitled to enforce his legal right and in the absence of any reason such as misconduct, is entitled to the costs of the suit as a matter of course" .....(sic)".

34. 16. The Court of Appeal proceeded to state that, "In *Devram Dattan versus Dawda* [1949] EACA 35, the predecessor of this Court held, inter alia, that it is trite law that the right of a successful litigant to recover his costs is left to the discretion of the Judge who tried his case. Being a matter of judicial discretion, the law demands that it be exercised judiciously on the facts. The question of the sufficiency of the facts based on which the trial Judge is called upon to exercise such discretion is entirely a matter for the Judge himself to decide, and the Court of Appeal will not interfere with the exercise of such discretion except within the limits permitted by law.
35. In *Supermarine Handling Services Ltd versus Kenya Revenue Authority* [2010] eKLR (Civil Appeal 85 of 2006), the Court provided guidelines that 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. Second, where a trial court has exercised its discretion on costs, an appellate court should not interfere unless the discretion has been exercised injudiciously or on wrong principles.
36. For example, where the trial court gives no reason for its decision, or where the reasons given do not constitute "good reason" within the meaning of the rule. See also cases of *James Koskei Chirchir versus Chairman Board of Governors Eldoret Polytechnic* [2011] eKLR (Civil Appeal No. 211 of 2005), *John Kamunya & another versus John Ngunyi Muchiri & 3 others* [2015] eKLR, and *Robric Limited & another versus Kobil Petroleum Ltd & another*, Nairobi CA No. 109 of 2015.
37. The genesis of the litigation between the parties herein is that the Competition Authority of Kenya (CAK) directed the Respondent to reflect the Applicant's loan repayments and instalments in Kenya Shillings. The Respondent's failure to comply with the said directive attracted litigation for the enforcement of the same. Initially, the Respondent denied the Applicant's prayer in its replying affidavit; however, during the court mention on 3<sup>rd</sup> June 2025, it agreed to comply with the directive as reflected by reflecting the loan arrears and repayments of the Respondent into Kenya Shillings. Thus, it conceded to the Applicant's prayer in her Application.
38. The Applicant contends that the Respondent acted in bad faith by computing the Applicant's loan arrears and repayments in US dollars, contrary to the earlier advised use of Kenyan Currency.
39. Relying on the cited authorities above and the provisions of section 27 of the CPA CAP 21, the Applicant was the successful party. Thus, the Applicant is entitled to enforce his legal right and, in the absence of any reason such as misconduct, is entitled to the costs of the suit as a matter of course.

### **What Is The Quantum of the Costs?**

40. In Kenya, the quantum of costs in civil litigation is determined by a taxing officer, who is typically a Registrar or Deputy Registrar of the High Court. This process, known as taxation of costs, involves examining and assessing the bill of costs submitted by the successful party, ensuring it aligns with the applicable legal principles and scales. Under Rule 10 of the Advocates (Remuneration) Order (ARO), a Registrar or a Deputy Registrar of the High Court is a taxing officer for purposes of taxation of bills under the ARO. In the Kenyan Judiciary's establishment, a Registrar or a Deputy Registrar is a judicial officer within the meaning of Article 161(1) and 3 of *the Constitution*.<sup>2</sup>
41. A taxing officer exercises judicial power in the determination of the quantum of costs. The position is expressed in numerous cases, among them, *KANU National Elections Board & 2 others v Salah*



Yakub Farah,3 KTK Advocates v Baringo County Government, the Court held that 'the taxing officer determines the determination of such quantum and is an exercise of judicial power guided by the applicable principles. The party seeking costs (the Applicant in the instant case) shall thus submit a bill of costs to the Court, outlining the professional fees, charges, disbursements, expenses, and remuneration she is claiming under.

42. Thus, the court orders that.

- i. The Applicant shall submit her itemised bill of costs to the deputy registrar (taxing master) for taxation.
- ii Orders Accordingly.

**DATED AND DELIVERED IN NAROK THIS 30<sup>TH</sup> JULY 2025**

**CHARLES KARIUKI**

**JUDGE**

