



**Muriithi Kiberia & Associates Advocates v Crescent Construction
Company Limited (Judicial Review Miscellaneous Application 12 of 2015)
[2025] KEHC 11196 (KLR) (Judicial Review) (29 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11196 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
JUDICIAL REVIEW MISCELLANEOUS APPLICATION 12 OF 2015**

JM CHIGITI, J

JULY 29, 2025

BETWEEN

MURIITHI KIBERIA & ASSOCIATES ADVOCATES APPLICANT

AND

CRESCENT CONSTRUCTION COMPANY LIMITED RESPONDENT

RULING

1. The only issue that forms the subject of this ruling is costs.
2. When this matter came up on 18th July, 2025, parties recorded a consent withdrawing the application dated 7th May, 2025 save for the question as to who should bear the costs.
3. This court is invited to make a determination on the issue pursuant to counsel's oral submissions. The Respondent claims that it is entitled to costs of the application because of the trouble that it took to respond to the application.
4. According to the Exparte Applicant, the Respondent has dragged them to be in court, and they owe them costs, and it would be absurd to expect them then pay the cost.
5. In *Joseph Oduor Anode v. Kenya Red Cross Society*, Nairobi High Court Civil Suit No. 66 of 2009; [2012] eKLR Odunga, J. thus observed:

“...whereas this Court has the discretion when awarding costs, that discretion must, as usual, be exercised judicially. The first point of reference, with respect to the exercise of discretion is the guiding principles provided under the law. In matters of costs, the general rule as adumbrated in the aforesaid statute [the *Civil Procedure Act*] is that costs follow the event unless the court is satisfied otherwise. That satisfaction must, however, be patent on record.



In other words, where the Court decides not to follow the general principle, the Court is enjoined to give reasons for not doing so. In my view it is the failure to follow the general principle without reasons that would amount to arbitrary exercise of discretion ...” [emphasis supplied].

6. In the instant case parties entered into a consent withdrawing the application. The *Civil Procedure Act* (Cap. 21, Laws of Kenya), the primary law of judicial procedure in civil matters, thus stipulates (Section 27(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 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” [emphases supplied].

7. *Halsbury’s Laws of England*, 4th ed Re-Issue (2010), Vol. 10, para. 16:

“The court has discretion as to whether costs are payable by one party to another, the amount of those 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, and the court has an absolute and unfettered discretion to award or not award them. This discretion must be exercised judicially; it must not be exercised arbitrarily but in accordance with reason and justice” [emphasis supplied].

8. In *Jasbir Singh Rai & 3 others v Tarlochan Singh Rai & 4 others* [2014] eKLR [13] it was held, to the same intent Mr. Justice (Rtd.) Kuloba thus writes in his work, *Judicial Hints on Civil Procedure*, 2nd ed. (Nairobi: Law Africa, 2011), p. 94:

“Costs are [awarded at] the unfettered discretion of the court, subject to such conditions and limitations as may be prescribed and to the provisions of any law for the time being in force, but they must follow the event unless the court has good reason to order otherwise: *Chamilabs v. LaljiBhimji and Shamji Jinabhai Patel*, High Court of Kenya, Civil Case No. 1062 of 1973.”

9. The Respondent has made out a case for the grant of order for costs.

10. The Respondent is hereby granted Kshs.2000 as costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 29TH DAY OF JULY, 2025.

J. CHIGITI (SC)

JUDGE

In the presence of:-

Ms. Musebe holding brief for Mr. Saende – Respondent

No attendance - Applicant

Nyabuto/Martin – Court Assistants

