

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
MOSHI DISTRICT REGISTRY
AT MOSHI**

CIVIL REFERENCE NO. 08 OF 2021

(Arising from bill of costs No.1 of 2020 of Hai District Court at Hai before Hon. G. Mawole-Taxing master and from original civil case No.7 of 2018 in the District Court of Hai at Hai)

JAABIL SWALEHE KOOSA 1ST APPLICANT
YAHAYA ABDI MWASHA2ND APPLICANT
KADRI AROUN KIMARO3RD APPLICANT
HAJI ABOU KIMARO4TH APPLICANT
TWAHA SADALAH URASSA5TH APPLICANT

VERSUS

**THE REGISTERED TRUSTEE OF
ISLAMIC SOLIDALITY CENTRE RESPONDENT**

RULING

9th & 28th March 2023

A.P.KILIMI, J.:

The applicants through their learned counsel have brought this application by way of chamber summons under Order 7(1) and (2) of the Advocates Remuneration Order of 2015 GN.No.264 praying for the following orders; first, this court be pleased to revise a ruling entered by Tax Master vide Bill of Costs No.1 of 2020 dated 10th day of July,2020 in the District Court of

Hai at Hai by making a proper interpretation of what it means by the phrase 'COSTS TO FOLLOW EVENT' in a ruling of the court in Civil Case No.7 of 2018 of the District Court of Hai, as was interpreted in Bill of Costs No.1 of 2020 by Taxing Master, and second any other reliefs which this court shall deem fit and just to grant in favour of the applicants. This application was supported by duly sworn affidavit of counsel for applicants.

In order to know the genesis of this matter, I find it convenient and necessary to recap the facts gave rise to this reference.

The respondent hereinabove filed a civil suit no.7 of 2018 at the District Court of Hai against all applicants mentioned above, before the case proceeded on merit, the applicants' counsel therein raised preliminary objections inter alia that, first the said court was having no Jurisdiction to hear and determine the matter filed. Second, that the plaintiff in that suit has sued wrong parties. And third, that the pleading itself was improperly verified by the verifier and verifier did not have locus stand to sue on behalf of the plaintiff. After the District Court considered both parties written submission in such objections, it sustained the first preliminary point of objection that the court was having no jurisdiction and consequently, dismissed the suit in its entirety and ordered Costs to follow the event.

Next after the said dismissal, the applicants hereinabove filed Bill of cost no. 1 of 2020 at the same court, it was this time the ball rolled on part of the respondent, did file two objections against the applicants to the effect that; the Bill of costs was incompetent for it involves people who were not parties to the case, and the said Bill of cost was nugatory because there was no order as to cost to the applicants against defendants and there was no attachment of that order or Judgment. After the District Court considered both parties arguments on these objections ruled out inter alia that, there was no court order meant that the plaintiff to pay the defendant costs of the said suit then, upheld the preliminary objections raised and consequently dismissed the said application with costs.

When this matter came for hearing before me, the applicants were represented by Mr. Elisante Kimaro and Mr. Engelberth Boniphace learned advocates while the respondent enjoyed the service of Mr. Edwin Silayo learned advocate. I acceded to their proposal of arguing the matter by written submission and I thank both for timely and lucid written presentation of their submission.

Applicants' counsels' submission started by quoting the opinion of the Taxing master on the said bill of costs in respect to interpreted costs to follow event. Further, they sought persuasive authorities on how other courts outside our jurisdiction deals with awarding costs, follows the rule that costs follow the event unless the court, for special reasons, otherwise direct. To bolster their arguments they referred the case of **Grimes v. Punchestown Development Co. Ltd** [2002] 4 IR 515,522, **R v. Lord Chancellor, Exp Child Poverty Action Group** [1999] 1 WLR 347, 356 and **Veolia Water Uk Plc v. Fingal County Council** (No.2) [2007] IR 81 & 85 and added that the application of the said rule requires identification of the event that costs have to follow, that is to say an identification of which party has won the proceedings.

Counsels further submitted that, in the ruling via Civil Case no. 7 of 2018, the trial Magistrate categorically indicated that, the raised Preliminary point of objection regarding the jurisdiction of the court was sustained which means that, the winner was the Defendants thus the event to be followed was on the dismissal of Civil case no 7 of 2018. They added that, from this perspective it is their settled view that, the event to be followed was the

dismissal of the afore mentioned civil case of which cost were granted to the defendants which were to be paid by plaintiff.

In replying the above, the counsel for respondent contended that the court has been invited to make interpretation of what it means by the phrase 'cost to follow event', the interpretation which will not affect in any manner the decision of the taxing master, because the basis for dismissal were; first that the bill of costs No.1 of 2020 involved some many other people who were not part of the civil case NO.7 of 2018 which led to bill of costs. Second, that the said application for bill of cost was not attached with the order or judgment which warranted the said costs. And third, that the phrase 'cost to follow event' was such ambiguous phrase that does not explicitly stated that the defendants herein were awarded costs.

The counsel further submitted that, the phrase cost to follow event as was applied in civil case No. 7 of 2018 did not warrant costs to the applicants therefore the Taxing Master was correct to arrive in the conclusion that the words costs to follow events are ambiguous and as such they do not automatically granted costs to the applicants and for that reason there was no court order granted the said costs. He added that once the court mean

to grant costs to a party to the suit there should be an express order to that effect. The said order should not be impliedly.

On the other part, The counsel for respondent also contended that, the phrase used in Civil case No.7 of 2018 was not even 'cost follows event' but rather "cost to follow event' which means costs were not yet granted but depend on the future event. Therefore, the cost were not granted as it was not expressly stated contrary to the rules established in the case of **DB Shapriya & Company Limited v. Regional Manager Tanroads Lindi**, Civil reference No. 1 of 2018, CAT at Dsm. The counsel added that the principle developed by this case is that the award of costs should not be impliedly, the same should be explicitly and specifically being stated and or pronounced. Also said Literally the phrase 'cost to follow event' should be interpreted to mean that an order for cost is not granted as there is another pending event of which its finality will determine the costs of particular case and as such they are abstained in the particular decision. Therefore, the phrase meant nothing but costs to be determined by future event.

Having taken into account the rival submissions by counsels above, it is important at the outset for purpose of clarity to reproduce below the

provisions of section 30(1) and (2) of The Civil Procedure Code Cap.33 R.E.
2019;

"30 (1) Subject to such conditions and limitations as may be prescribed and to the provisions of any law from the time being in force, the costs of, and incidental to, all suits shall be in the discretion of the court and the court shall have full power to determine by whom or 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 has no jurisdiction to try the suit shall be no bar to the exercise of such powers.

*(2) Where the court directs that any **costs shall not follow the event**, the court shall state its reasons in writing."*

[Emphasis added]

In this matter, this court has been invited to make interpretation of the word costs to follow the event. Although the learned counsel argued that the phrase used at the District court was costs to follow events is somehow different with costs follow the event, to my view all means the same, in my research in this matter, I have come across cases the same may be used by phrases like; "costs shall follow the event", "costs should follow the event"

and “costs must follow the event”, therefore, it merely depends the context used.

It is a trite that the general rule is that costs should follow the event and the successful party should not be deprived of them except for good cause. This was developed by the defunct Court of Appeal for East Africa in **Hussein Janmohamed & Sons v. Twentsche Overseas Trading Co. Ltd** [1967] 1 EA 287, in this case his Lordship Biron, J. further quoted from Mulla: the Code of Civil Procedure, 12th Edition, at Page 150 where it is stated:

*"The general rule is that costs shall follow the event **unless the court, for good reason, otherwise orders**. This means that the successful party is entitled to costs unless he is guilty of misconduct or there is some other good cause for not awarding costs to him. The court may not only consider the conduct of the party in the actual litigation, but the matters which led up to the litigation."*

[Emphasis added]

(See also the cases of **Nkaile Tozo v. Philimon Mussa Mwashilanga** [2002] TLR 276 and **In The Matter of Independent Power Tanzania Ltd and in The Matter of a Petition by a Creditor for an**

administration order by Standard Chartered Bank (Hong Kong) Ltd

Misc. Civil Cause No. 112 of 2009 (unreported), to mention few.

In the matter at hand, according to the arguments of the parties, I have perceived two perspectives appeared. The first limb is that costs follow the event means costs depend on the future event of the same case, a good example is if the main case still pending and the said phrase of costs is stated in disposing PO then should wait until the conclusion of the case, and the second limb is where upon the phrase is stated then costs accrue immediately no matter the case is still pending or not.

Now, in interpreting the phrase costs follow the event, the above quoted provisions of section 30 (1) and (2) of the Civil Procedure Code Cap 33 R.E.2019 must be read in a whole in order to grasp the intention of the legislature. It is my settled view the wording above intended costs to be awarded immediately after the disposal of any matter or action or claim in a suit whether in part or the whole which make a party to the case succeeds upon it.

In the case of **Novoneca Construction Company Ltd & Melchior Martin Bagule v. National Bank of Commerce & Tukuyu Branch,**

National Bank Of Commerce Ltd, Commercial Case No. 8 of 2015
Commercial Division at Dar es salaam. The defendants therein filed a PO
along with the written statement of defence to which the plaintiffs' counsel
partially conceded. In granting costs immediately after the disposal of the
said PO the court observed that;

*"It is obvious that the counsel for the defendants' counsel
must have spent time and resources in preparation for the
PO. These are costs involved in that endeavour which the
applicant must shoulder following the event. **I find no
sufficient reason why the defendants should wait for
final determination of the suit to enjoy them.** After all,
no one is sure at this stage in whose favour will the case end.
Costs soothe litigants and, unless there are cogent reasons to
the contrary, **must follow the event rather than wait
until finalization of the suit** as counsel for the plaintiffs
would want this court to do."*

[Emphasis is mine]

In my opinion I entirely subscribe with the above observation that a
successful party should ordinarily be awarded costs immediately unless
his/her conduct is such that it would be denied costs or the successful issue
was not attracting costs.

I wish further to refer a persuasive authority from Kenya, where they have a provision in pari- materia with our law, and that is section **27 (1)** of the **Civil Procedure Act Cap 21, Laws of Kenya** which its wording is almost the same wording with provisions of section 30(1) and (2) of The Civil Procedure Code Cap.33 R.E. 2019. Thus, In Kenyan case of Cecilia **Karuru Ngayu v. Barclays Bank of Kenya & Another** Civil Case No 17 of 2014 High Court of Kenya at Nyeri. Therein while the case still pending, the court resolved the issue geared by consent of parties that second defendant was wrongly joined, made an order striking off the second defendant from proceedings and ordered the plaintiff to pay to the second defendant the costs of the case.

Before the said award of costs, the court asked itself whether or not the act of recording the intended consent is an event within the phrase ***"costs follow the event."*** And further asked does the filing of the suit and the various steps taken by the parties and the intended resolution of that suit by recording the intended consent amounted to an event as envisaged under section **27** Civil Procedure Act Cap 21 of Laws.

I answering the above, the said court went on to refer Justice (Retired) Richard Kuloba in his book, **Judicial Hints on Civil Procedure**, 2nd Edition, at page 99 states as follows:-

*"The words **"the event"** mean the result of all the proceedings to the litigation. The event is the result of the entire litigation. It is clear however, that the word "event" is to be regarded as a collective noun and is to be read distinctively so that in fact it may mean the "events" of separate issues in an action. Thus, the expression **"the costs shall follow the event"** means that the party who on the whole succeeds in the action gets the general costs of the action, but that, where the action involves separate issues, whether arising under different causes of action or under one cause of action, the costs of any particular issue go to the party who succeeds upon it. An issue in this sense need not go to the whole cause of action, but includes any issue which has a direct and definite event in defeating the claim to judgement in the whole or in part"*

In view of what I have endeavored and applying my minds to the above, I am bold to reach the conclusion that, costs follow the event is interpreted to mean costs be awarded immediately after the disposal of any matter or action or claim in a suit whether in part or the whole which make a party to the case succeeds upon it.

In regard to what the second reliefs sought by the applicant, the trial District Court was very clear on its ruling. At page 4 of the typed judgment the learned Taxing Officer had this to say: -

"More so when I was passing through the application of bill of costs filed by the decree holders in this matter, I found no attachment ever been attached with it. No copy of judgment attached, neither the decree, nor any receipt they attached to justify their claim. I wonder how they planned to prove their claim.

Having demonstrated as above I have no hesitation to concur with the submission made by the counsel for the judgment debtor..... and I also concur with him that this application for bill of costs comprises people who were not parties to the Civil Case No.7 of 2018. I therefore proceed to uphold the preliminary objections raised and consequently I dismiss the application with costs."

I have passed through the proceeding in the said court record, since always court record accurately represents what happened, I have also seen the above was not complied with by the applicants when they sought for costs.

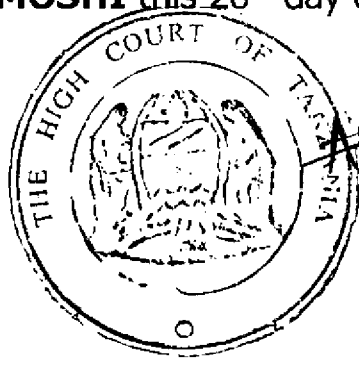
I concede with the learned Taxing Officer that copies of judgment or Decree are mandatory documents to be attached in any application for costs, these are necessary because they show whether costs has been granted as observed above either Costs should follow the event or Costs should be in

the cause, which means costs shall abide the results of the pending matter. For this reason, without further going, I thus find the Taxing Officer was right to dismiss the said bill of costs.

Upon the foregoing considerations, this reference succeeds to that extent as aforestated, however I will not give order as to costs in the above circumstance.

It is so ordered.

DATED at MOSHI this 28th day of March, 2023.



A. P. KILIMI
JUDGE
28/3/2023

Court: - Ruling delivered today on 28th day of March, 2023 in the presence of Mr. Silayo Edwin for Respondent also holding brief of Kimaro Elisante for applicants. Applicants absent.

Sgd: A. P. KILIMI
JUDGE
28/03/2023