



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Simon Njogu Kanai (Deceased) (Succession Cause
E023 of 2021) [2024] KEHC 9246 (KLR) (31 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9246 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
SUCCESSION CAUSE E023 OF 2021
LM NJUGUNA, J
JULY 31, 2024**

IN THE MATTER OF THE ESTATE OF SIMON NJOGU KANAI (DECEASED)

BETWEEN

**MARTIN MULWA MUKUKWI 1ST APPLICANT
CATHERINE MUTHONI MULWA 2ND APPLICANT
JULIUS NYAGA MNTHUNGU 3RD APPLICANT
ESTHER THUBA 4TH APPLICANT
ANTHONY DAVID MUREUTHI 5TH APPLICANT
SERENO CONSOLATA WANVORIA 6TH APPLICANT
JACINTA MARIGU NJAGI 7TH APPLICANT
FREDRICK KIVUTI CHIRIAW 8TH APPLICANT**

AND

**BETH MUTHONI KAMAU WAIYAKI 1ST RESPONDENT
ANN MURINGO KANAI 2ND RESPONDENT
MARY WAMARWA KANAI 3RD RESPONDENT
BETTY WANJIRU KANAI 4TH RESPONDENT
NANCY WAKABARI KANAI 5TH RESPONDENT
EDWIN WACHIRA KANAI 6TH RESPONDENT
JOHNATHAN KANAI NJOGU 7TH RESPONDENT
GEORGE NJAI THARA 8TH RESPONDENT
GRACE NJERI NJAI 9TH RESPONDENT**



EMALYNE WANJIRU NJAI 10TH RESPONDENT

SIMON KANAI NJAI 11TH RESPONDENT

RULING

1. The applicants filed an application dated 16th January 2024 seeking revocation of grant and another application dated 16th April 2024 seeking review of the court's orders issued on 06th November 2023 to rectify the certificate of confirmation of grant.
2. Through a consent order issued on 15th May 2024, the parties agreed that both applications be allowed. The parties were directed to submit on the issue of costs for both applications. They complied with the directions on filing of submissions.
3. The applicants jointly submitted that through the application dated 16th April 2024, they knew that the land indicated in the grant did not belong to the estate of the deceased. That facts of the case regarding the beneficiaries of the deceased were misrepresented to the court, necessitating the application. It was their case that both applications are as a result of the respondents' mistakes. They urged the court to award them costs for both applications given that the applications have cost them unnecessary court attendance, filing fees and legal fees.
4. The respondents jointly stated that given the circumstances of the case, the court should order that each party bears its own costs of the applications. That, in any event, the applicants did not seek costs through the application dated 16th April 2024. That it was only fair to review the application since the issue arising through the said application was to be placed before the ELC for determination of ownership of parcel number Ngandori/Kirigi/7611. That regardless of the issue of ownership, the respondent proceeded to have the estate distributed amongst themselves. They urged that there is no losing party for both applications and so it is prudent to have each party bearing its own costs.
5. The issue for determination herein is: who should be awarded costs of the 2 applications?
6. The general principle in awarding of costs is that costs follow the event. This was explained in the case of Reid, Hewitt & Co v Joseph, AIR 1918 Cal 717 and Myres v Defries (1880) 5 Ex D 180, the house of Lords noted that: -

“The expression ‘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 where the action involves separate issues, whether arising under different causes of action or under one cause of action, the word ‘event’ should be read distributive and the costs of any particular issue should go to the party who succeeds upon it.”
7. In the present case, the applicants filed 2 applications; one seeking revocation of grant, the other seeking review of the court's orders confirming the grant. Both applications were determined through consent of the parties, which became the order of the court. Only the issue of costs remains outstanding. In the case of *Party of Independent Candidate of Kenya & another v. Mutula Kilonzo & 2 others (2013)* eKLR the court cited with approval the words of Murray C J in the case of *Levben Products v. Alexander Films (SA) (PTY) Ltd 1957 (4) SA 225 (SR)* at 227 that it stated:

“It is clear from authorities that the fundamental principle underling the award of costs is two-fold. In the first place the award of costs is matter in which the trial Judge is given



discretion...But this is a judicial discretion and must be exercised upon grounds on which a reasonable man could have come to the conclusion arrived at....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 good grounds for doing so.”

8. The application for revocation of grant sought to challenge distribution of the estate. The review application sought to review the orders of the court confirming the grant by substituting parcel number Ngandori/Kirigi/7611 with Ngandori/Kirigi/8051. Through both applications, the applicants are the ones who moved the court and the two applications were determined by consent of the parties. It also matters whether the conduct of a party was such that it caused prejudice to the other. In the case of *Orix (K) Limited vs Paul Kabuu & 2 others (2014)* eKLR where it was held inter alia:-

“...the court should have been guided by the law that costs follow the event, and the plaintiff being the successful party should ordinarily be awarded costs unless its conduct is such that it would be denied costs or the successful issue was not attracting costs. None of the deviant factors are present in this case and the court would still have awarded costs to the plaintiff, which I do.”

9. Therefore, the costs for both applications are hereby awarded to the respondents. The amount of costs to be agreed between the parties or taxed by the taxing master of this court.

10. It is so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 31ST DAY OF JULY, 2024.

L. NJUGUNA

JUDGE

..... for the 1st Applicant
 for the 2nd Applicant
 for the 3rd Applicant
 for the 4th Applicant
 for the 5th Applicant
 for the 6th Applicant
 for the 7th Applicant
 for the 8th Applicant
 for the 1st Respondent
 for the 2nd Respondent
 for the 3rd Respondent
 for the 4th Respondent
 for the 5th Respondent
 for the 6th Respondent
 for the 7th Respondent
 for the 8th Respondent
 for the 9th Respondent



..... for the 10th Respondent
..... for the 11th Respondent

