



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kiai v Gaku & 6 others (Civil Appeal E003B of 2021)  
[2023] KEHC 25638 (KLR) (22 November 2023) (Judgment)**

Neutral citation: [2023] KEHC 25638 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MURANG'A  
CIVIL APPEAL E003B OF 2021  
J WAKIAGA, J  
NOVEMBER 22, 2023**

**BETWEEN**

**CHARLES ALEXANDER KIAI ..... APPELLANT**

**AND**

**JOHN PETER MWANGI MBAYA ..... 1<sup>ST</sup> RESPONDENT**

**JULIUS WAMBUGU GAKU & 5 OTHERS ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. By a plaint dated 5<sup>th</sup> July 2006 the Respondents sued the Appellant for special and general damages arising from the demolition of their development on Plot No LOC 14/KIRU/1965/17 registered in their name using Muranga County Council with a view of dispossessing the Respondent's part thereof.
2. By a statement of defence dated 2<sup>nd</sup> August 2006, the Appellant denied having demolished the Respondent's premises and in the alternative stated that if any the said demolition was carried out by Order and Notice duly served by concerned authority.
3. By application dated 3<sup>rd</sup> March 2020 the subject matter of this appeal, the Appellant sought for cost of the suit, the Respondents having wholly withdrawn and or discontinued the suit on the 13th day of February 2020 at a hearing date in which he was not served as the law requires hence this application.
4. By a ruling thereon dated 6<sup>th</sup> October 2020, the Court stated that it had ordered on 27<sup>th</sup> February 2020 that the case be marked withdrawn with no order as to cost and therefore the application was without cost.
5. Being aggrieved by the said Ruling, the Appellant filed this appeal on the grounds that the Court erred in dismissing the same without awarding him cost yet the case had been in Court for 15 years with the intention of vexing him.



6. When the appeal came up for hearing, the Appellant who was unrepresented submitted that he was entitled to cost.

### **Analysis and Determination**

7. The only issue for determination in this appeal is whether the Appellant was entitled to cost and whether the Court was right in not awarding cost to the same?
8. It is not in dispute that the Respondents withdrew the suit after the Appellant had raised preliminary objection to the amended plaint which objection was allowed by the Court with cost to the Appellant leading to the filing of the application the subject matter of this appeal.
9. Costs are provided for under Section 27 of the Civil Procedure Act which at Sub-Section 1 thereof provides that the costs and incidentals to all suits shall be at the discretion of the Court or the judge and the Court or the judge shall have full powers to determine by whom and out of what property such cost are to be paid, provided that cost of any action cause or other matter or issue shall follow the event unless the Court or the judge shall for good reason otherwise direct.
10. This position was confirmed by the Court in *Republic v Rosemary Wairimu Munene Ex-parte Applicant vs Ihururu Dairy farmers Cooperative Society Ltd* where the Court stated: “the issue of cost is the discretion of the Court as provided under the above Section. The basic rule on attribution of cost is that cost follows the event ... it is well recognized that the principle cost follows 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 “
11. Did the Court show good cause as to why the Appellant was not entitled to cost? From the proceedings herein, the Court was clear that it had ordered the suit to be withdrawn without cost and the only avenue available to the Appellant was to apply for review of the said order. I therefore find no fault with the exercise of the Courts discretion not to award cost.
12. It therefore follows that the appeal lacks merit and is dismissed with no order as to cost.

**DATED SIGNED AND DELIVERED AT MURANGA THIS 22<sup>nd</sup> DAY OF NOVEMBER 2023**

**J. WAKIAGA**

**JUDGE**

In the presence of:

Appellant in person

No appearance by Mr. Mbuthia for Respondent

Jackline – Court Assistant

