



**Njeru v Muguongo (Environment & Land Case 5 of 2021)
[2023] KEELC 18112 (KLR) (21 June 2023) (Ruling)**

Neutral citation: [2023] KEELC 18112 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND CASE 5 OF 2021
CK YANO, J
JUNE 21, 2023
(FORMERLY CHUKA ELC CASE NO. E008 OF 2021)**

BETWEEN

VICTOR MATI NJERU PLAINTIFF

AND

VICTOR MIRITI MUGUONGO DEFENDANT

RULING

1. Before me for determination is the issue of costs, the plaintiff and the defendant having settled the matter by consent on 6th February, 2023. By a plaint dated 6th August 2021, the plaintiff sued the defendant seeking the following orders:-
 - a. A declaration be issued that there is a constructive trust in favour of the plaintiff in land parcel number Nkuene/Mitunguu/Kithino/1146.
 - b. Alternatively, a declaration that the plaintiff is entitled by adverse possession of over 12 years of a parcel of land comprised in land parcel number Nkuene/Mitunguu/Kithino/1146 formerly known as title No. L.R Nkuene/ Mitunguu/Kithino/581.
 - c. That a vesting order do issue to the Land Registrar Tharaka Nithi County to register the plaintiff as proprietor of land parcel Number L.R Nkuene/Mituungu/Kithino/1156.
 - d. That the defendant be ordered to pay the costs of the suit to the applicant.
 - e. That such further orders be made as may be just and expedient.
2. The defendant entered appearance and filed a defence. Pretrial was conducted and there were several court attendances for hearing of the suit.
3. On 6th February, 2023, by consent of the parties, judgment was entered in the following terms.



1. That a vesting order is hereby issued directing the Land Registrar Meru County to register Land Parcel No. Nkuene/Mitunguu/Kithino/1146 in the names of Victor Mati Njeru.
 2. That the plaintiff to pay the defendant Kshs. 12,000/= forthwith.
 3. That the plaintiff to meet the costs of the transfer.
 4. That the court to make a determination on the issue of costs of the suit.
4. Therefore, the only issue for determination regards who shall bear the costs of the suit. Section 27 of the *Civil Procedure Act* provides as follows-;

“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 and incidental to all suits shall be and the discretion of the court or judge, and 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 give all the necessary directions and for the purpose aforesaid; and the fact that the court 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 direct.”

5. In *Republic Vs Rosemary Wairimu Munene, Ex-parte Applicant Vs Ihururu Dairy Farmers Co-operative Society Ltd* the court held as follows:-

“The issue of costs is the discretion of the court as provided under the above section.; The basic rule on attribution of costs is that costs follow the event.... it is well recognized that 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.”

6. Thus, it is imperative to bear in mind the various steps taken by the parties in the case so as to appreciate the trouble taken by both parties since the suit was filed. I find useful guidance in the following passage from the Halsbury’s Laws of England.

“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 to award them. This discretion must be exercised judicially, it must not be exercised arbitrarily but in accordance with reason and justice.

7. Writing on the same subject Mr. Justice (Retired) Kuloba states;-

“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...”

8. In the case of *Cecilia Karuru Ngaya V Barclays Bank of Kenya & another* (2016) EKLR, Mativo J. (as he then was) held that:

“To my mind there appears to be no clear or prescribed definition of what constitutes “good reason” that will justify the court departure, in awarding costs, from the general rule that



“costs follow the event.” Discussing the same point, the Supreme Court of Kenya in the case of Jasbir Singh Rai & others Vs Tarlochan Rai & others observed that-;

“In the classic common law style, the court have to proceed on a case by case basis, to identify “good reasons” for such a departure. An examination of evolving practices on this question shows that as an example, matters in the domain of public interest litigation tend to be exempted from award of costs...”

9. The reason for the above reasoning is that in public litigation, a litigant is usually advancing public interest as opposed to personal gain.

10. In the above cited case the court cited the decision in the [Party of Independent Candidate of Kenya Vs Mutula Kilonzo & 2 others](#) [2013] eKLR where the court citing two leading decisions on the subject held *inter alia* that-;

“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... but this is a judicial discretion and must be exercised upon grounds on which reasonable man could 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.”

11. As already stated, Section 27 of the [Civil Procedure Act](#) provides the general rule which ought to be followed unless for good reason to be recorded. The said section in my view does not make distinctions between determinations made by consent or on courts own determination or withdrawals. This position is well stipulated by Richard Kuloba in his [book](#) where he observed that-;

“The fact that the unsuccessful party did not contest the case is not in itself a ground for refusal of costs but it is a factor that can be taken into account if other good reason exists.”

12. However, the only consideration is the “event” as was held in the Supreme Court of Uganda in [Impressa Ing fortunato Federice Vs Nabwire](#) [2001]2 EA 383 where the court stated-;

“The effect of Section 27 of the [Civil Procedure Act](#) is that the judge or court dealing with the issue of costs in any suit action, cause or matter has absolute discretion to determine by whom and to what extent such costs are to be paid: of course like all judicial discretions, the discretion on cost must be exercised judiciously and how a court or judge exercises such discretion depends on the facts of each case. If there were mathematical formula, it would no longer be discretion. While it is true that ordinarily, costs should follow the event unless for some good reason the court orders otherwise, the principles to be applied are-; –

(i) under section 27 (1) of the [Civil Procedure Act](#), costs should follow the event unless the court orders otherwise. This provision gives the judge discretion in awarding costs but that discretion has to be exercised judicially.

(ii), A successful party can be denied costs if it is proved that but for his conduct the action would not have been brought... It is trite law that where judgment is given on the basis of consent of parties, a court may not inquire into what motivated the parties to consent or to admit liability...

13. In determining the issue of costs, the court is entitled to look at *inter alia*



- (i) the conduct of the parties,
- (ii) the subject of litigation,
- (iii) the circumstances which led to the institution of the proceedings,
- (iv) the events which eventually led to their termination,
- (v) the stage at which the proceedings were terminated, (vi) the manner in which they were terminated,
- (vii) the relationship between the parties and
- (viii) the need to promote reconciliation amongst the disputing parties pursuant to Article 159 (2) (c) of the Constitution.

In other words the court may not only consider the conduct of the party in the actual litigation, but the matters which led to the litigation, the eventual termination thereof and the likely consequences of the order for costs.

14. I have considered the above points and the conduct of the parties prior and after filing this suit. It is not in dispute that the suit was initiated seeking the orders enumerated above and that the plaintiff and the defendant have agreed to compromise the case.
15. As stated above, in cases whereby the parties enter into a consent, the court does not go further to inquire the reasons for the consent. This court is not bound to dig into the reasons why the plaintiff sought 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 the defendant is entitled to costs. The court is only interested in determining whether or not the defendant is entitled to costs for the steps taken as enumerated earlier.
16. The question that arises is whether or not the act of recording the consent is an event within the phrase “costs follow the event.” It is not in dispute that the plaintiff and the defendant agreed to resolve the case.
17. Does the filing of the suit and the various steps taken by the parties and the resolution of this suit by recording the consent as aforesaid amount to an event as envisaged under Section 27 Civil Procedure Act cited above. Justice (retired) Richard Kuloba in the earlier cited book 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 distractively 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 judgment in the whole or in part.”
18. It matters not that the case was withdrawn or compromised or intended to be compromised as in this case. What matters is whether the defendants are entitled to costs for the trouble undertaken by them in defending these proceedings.



19. Considering the entire chain of events from filing this suit up to the time the parties left the issue to the court to determine, the numerous court attendances cited above, I find no reason to deny the defendant costs and in exercise of my discretion in a manner that meets the interests of justice for both parties in the circumstances of this case, and guided by the law and relevant authorities, I hereby make the following orders-;

- i. That the defendant do pay to the plaintiff the costs of this case.
- ii. The costs to be agreed or taxed by the taxing master of this court.

20. It is so ordered.

DATED, SIGNED AND DELIVERED AT MERU THIS 21ST DAY OF JUNE 2023

In The Presence Of

Court assistant - V.Kiragu

No appearance for plaintiff

No appearance for defendant

C.K YANO

JUDGE

