



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**COMMERCIAL & ADMIRALTY DIVISION**

**HCCC NO. 133 OF 2014**

**JOHN DOMINIC OBEL.....1<sup>ST</sup> PLAINTIFF**

**ANNE ATIENO OBEL.....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**CONSOLIDATED BANK OF KENYA LTD.....1<sup>ST</sup> DEFENDANT**

**TIMELESS DOLPHIN AUCTIONEERS.....2<sup>ND</sup> DEFENDANT**

**RULING**

1. The general rule on costs is that they follow the event (Section 27 of the Civil Procedure Act).

2. Costs are also at the discretion of the Court. A discretion that should be judiciously exercised. See Jasbir Singh Rai v Tarlochan Singh Rai & 4 others [2014]eKLR in which the Supreme Court observed;

[11] It emerges clearly that, whether in this Court or any other superior Court, costs are awarded at the discretion of the Court or Judge. Indeed, as for the Supreme Court, Rule 3(5) of the Supreme Court Rules is the most pertinent, especially as it constitutes the governing framework for costs – and costs fall under the “inherent powers of the Court.”

[12] Such a principle applies in other countries as well, as we learn from the comparative lesson. We draw, in this respect, from 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].

3. The Plaintiffs filed suit against the Defendants for the following Orders:-

a) A declaration that the 1<sup>st</sup> Defendant’s purported Statutory Notice of Sale dated the 8<sup>th</sup> of August 2013 is defective and void in law.

b) The 1<sup>st</sup> and 2<sup>nd</sup> Defendants to be restrained, jointly and severally, whether acting by their servants and/or agents howsoever from interfering with selling, disposing of and/or transferring or causing to be transferred any interest in the property known as L.R. KAJIADO/KAPUTIEI NORTH/5334 on the basis of the 1<sup>st</sup> Defendant’s Statutory Notice of Sale dated the 8<sup>th</sup> of August 2013.

c) An injunction restraining Defendants jointly and severally whether acting by their servants and/or agents howsoever from interfering with the Plaintiff’s quiet enjoyment and possession of the property known as L.R. KAJIADO/KAPUTIEI NORTH/5334.

d) The costs of this suit.

e) Any other orders or further relief deemed fit and just to grant by this Honourable Court.

4. The Defendants filed a Defence dated 29<sup>th</sup> May 2014 in which they denied the averments in the Plaint and resisted the claim.

5. On 26<sup>th</sup> September 2019, Counsel for the parties asked this Court to record the following consent:-

“By consent the matter be marked as settled but the questions as to costs be determined by Court on argument of the parties”.

6. The Court has considered the arguments made by Counsel for the parties. The Plaintiffs seeks to have each side bear its own costs while the 1<sup>st</sup> Defendant requests for an order that the Plaintiffs bear the costs.

7. When this Court was asked to mark the matter herein as settled, it was by consent of Counsel for the parties. They did not disclose the terms of settlement. It is not for this Court to speculate as to who emerged the victor on settlement. The event upon which the suit was marked as settled is unknown to the Court.

8. In circumstances like this, I order that each side bears its own costs for the suit.

**Dated, Signed and Delivered in Court at Nairobi this 20<sup>th</sup> Day of December 2019.**

**F. TUIYOTT**

**JUDGE**

**PRESENT;**

Odoyo holding brief Wasuna for Plaintiff

No appearance for Defendant

Court Assistant: Nixon