



**Hussein v H/Master Ainsworth Primary School & others (Environment and Land Appeal E066 of 2022) [2023] KEELC 21541 (KLR) (14 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21541 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND APPEAL E066 OF 2022  
AA OMOLLO, J  
NOVEMBER 14, 2023**

**BETWEEN**

**REHMA HUSSEIN ..... APPELLANT**

**AND**

**H/MASTER AINSWORTH PRIMARY SCHOOL AND  
OTHERS ..... RESPONDENT**

**RULING**

1. On 21<sup>st</sup> February 2023, the appellant withdrew this appeal stating that the matter had been overtaken by events and asked the court not to award any costs. Mr Orlando learned counsel for the Respondents urged the court to award them costs of the withdrawn appeal.
2. The parties filed written submissions in support of and against the award of costs. The 6<sup>th</sup> to 9<sup>th</sup> Respondents submitted that they were monitoring the activities of the Appellant and became aware when they filed this appeal. Consequently, they have always participated in the proceedings despite not being served. The said Respondents referred to the provisions of section 25 and 27 of the [Civil Procedure Act](#) and also cited several case inter alia Nicholas Kiptoo arap Salat vs IEBC & 7 Others, SCOK civ application no 7 of 2014. The SCOK held thus:
3. The Appellant submitted that the Respondents are not entitled to costs because Mr Orlando volunteered himself into the matter on the 19<sup>th</sup> January 2023 without being served.
4. I have perused the court file and note that the memo of appeal was filed on 12<sup>th</sup> August 2022 alongside an application filed under certificate of urgency. The application was subsequently withdrawn on 21<sup>st</sup> November 2022 before it was served on the Respondents. When the matter came for directions on appeal, Mr Kibera counsel for the Appellant applied to withdraw the appeal. Mr Orlando who was present for the Respondents had no objection to the withdrawal but to be granted costs.



5. The appeal was withdrawn at an early stage and as the Respondents admitted before they were served. Indeed, the law is clear that costs follow the events but in this instant, the 6<sup>th</sup> to 9<sup>th</sup> Respondents have not demonstrated the inconveniences suffered for which they should be compensated for since they had not been served and essentially no prosecution took place. I am not persuaded to award any costs and I hereby award none.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 14<sup>TH</sup> NOVEMBER, 2023.**

**A. OMOLLO**

**JUDGE**

