



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

CONSTITUTIONAL PETITION NO. 7 OF 2020

IN THE MATTER OF THE CONSTITUTION

AND

IN THE MATTER OF ARTICLES 6, 10, 12, 23, 27, 47, 50, 159, 165, 175, 176,

185, 189, 190 AND THE FOURTH SCHEDULE OF THE CONSTITUTION

AND

IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTION

ACT AND ALL ENABLING PROVISIONS OF THE LAW

BETWEEN

MERU COUNTY COFFEE MILLERS CO-OPERATIVE UNION LIMITED.....1ST PETITIONER

MERU COUNTY INVESTMENT & DEVELOPMENT CORPORATION.....2ND PETITIONER

MERU CENTRAL CO-OPERATIVE UNION LTD.....3RD PETITIONER

MERU NORTH CO-OPERATIVE UNION LTD.....4TH PETITIONER

AND

THE NEW KENYA PLANTERS CO-OPERATIVE UNION.....1ST RESPONDENT

JOEL KINYUA IMITIRA.....2ND RESPONDENT/1ST CONTEMNOR

ROBINSON MBOLOI.....2ND CONTEMNOR

RULING

A. WITHDRAWAL OF A PETITION

1. This matter came for mention on 20.1.2022 with a view of recording a possible consent to settle the matter out of court. Mr. Ken Muriuki advocate for the petitioners informed the court he had been instructed by his clients to withdraw the petition with no orders as to costs.

2. He submitted that if the respondents were not agreeable to the request, the court finds the matter was brought up in public interest since the petitioners were also members of the 1st respondent.

3. Mr. Gitonga advocate for the respondents submitted whereas his clients had no objection to the petition being withdrawn, the court should find they were entitled to costs for costs follow the event.

4. Counsel for the respondents he submitted the matter was not brought in public interest as alleged by counsel for the petitioners and that lawyers did not work on charity, the matter was complex, since it involved a lot of time and research.

5. In a rejoinder, Mr. Ken Muriuki insisted a look at the pleadings would show the matter was in the interest of coffee farmers in the large Meru County who were against the taking over of the suit premises by the respondents. Therefore it would not be fair to condemn the innocent farmers to pay costs while they were protecting the interests of all the coffee farmers in the whole County of Meru.

6. The 1st petitioner in his petition dated 18.5.2020 was described as re-presenting 35 farmers' Cooperative Societies with over 70,000 farmers and who were stake holders included the 2nd, 3rd and 4th respondents of Meru County. The 2nd, 3rd and 4th petitioners were described as investment vehicle of the County Government of Meru and cooperative societies respectively the latter being a shareholder of the defunct Kenya Planters Cooperative Union.

B. PLEADINGS

7. The petitioners claim was over the leased premises known as Plot **No. Meru Municipality 472** vide a lease executed in 2013 between the defunct KPCU and 3rd and 4th petitioners on one hand as well as 3rd and 4th respondents.

8. At paragraph 28 of the petition, the petitioners alleged on 8.5.2020 the respondents attempted to evict them despite the lease contrary to their constitutional rights and freedoms with a view of taking over the premises.

9. It is not in dispute that a conservatory order was issued on 19.5.2020 subsequent to which contempt proceedings were initiated.

10. The respondents replied to both the notice of motion seeking for conservatory orders and the petition through a replying affidavit sworn by Henry Gichuhi Kinyua on 5.6.2020 admitting there was initially a lease agreement as alleged though it expired but not renewed by them in favour of the petitioners.

11. Further, the respondents admitted the 2nd and 4th petitioners were members of the defunct KPCU but could not use that fact to occupy the premises without paying monthly rent.

C. LEAVE TO WITHDRAW A PETITION AND ITS EFFECT ON COSTS

12. It is trite law that costs follow events as per **Section 27 of the Civil Procedure Act. Rule 26 of the Constitution of Kenya (Protection of Rights & Fundamental Freedoms) Practice and Procedure Rules 2013** provides that; the award of costs is at the discretion of the court and that in exercising its discretion to award costs, the court shall take appropriate measures to ensure that every person has access to the court to determine their rights and fundamental freedoms.

13. **Rule 27** allows a petitioner on notice or with leave of court to withdraw or discontinue the proceedings. On hearing the parties, the court shall decide on the matter and determine the juridical effects of that decision.

14. Further, **Rule 27 (3)** provides that inspite of the wish of the petitioner to withdraw or discontinue the proceedings, the court may, for reasons to be recorded proceed with the hearing of a petition.

15. In the instant case, there is no doubt the court established there was a controlled tenancy between the parties and that there were rent arrears as at 8.5.2020 when the 1st respondent took over the premises. Other than the ruling made on 19.8.2020 following an interlocutory application, no other action was taken in this matter.

16. On 16.11.2021, the court was informed circumstances had changed since the petitioners had vacated the suit premises. The respondents did not deny those facts.

17. Given the foregoing background, the court is to decide on the twin issues on withdrawing of the petition.

D. DETERMINATION

18. **Rule 27 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013** provides that a petitioner may on notice to court and to the respondent apply to withdraw the petition or with leave of the court discontinue the proceedings.

19. The court has THE mandate after hearing the parties to decide on the matter and determine the juridical effects of that decision.

20. Further, despite **Sub-Rule (2)**, the court may for reasons to be recorded proceed with the hearing inspite the wish of the petitioner to withdraw or discontinue the proceedings.

21. On the other hand, **Rule 26** provides that the award of costs was at the discretion of the court which shall take appropriate measures to ensure that every person has access to the court to determine their rights and fundamental freedoms.

22. The petitioners have expressed their willingness to withdraw the proceedings which the respondents are not objecting save that they insist that the court should award them costs.

23. The reasons for the withdrawal of the petition are that it has been overtaken by events and that the circumstances of the subject matter had changed. Even though there were no details given on the nature of the changes, the respondents did not dispute those facts.

24. In *Harry John Paul Arigi & 2 others –vs- Board, Kenya Ports Authority & 2 others [2016] eKLR*, the court held the right to withdraw or discontinue a petition was not automatic and or achieved merely by a notice.

25. In this petition, the reasons given in my view appear valid and genuine. The respondents have not expressed any prejudice if the petition was discontinued or withdrawn. I find the same merited and hence I grant the leave for the withdrawal of the petition dated 18.5.2020. See *Nicholas Kiptoo Arap Korir Salat –vs- Independent Electoral and Boundaries Commission & 7 others [2014] eKLR*.

26. Coming to the issue of costs, the court has gone through the pleadings. What is notable is that the petitioners are coffee farmers drawn from Meru County who are also members of the 1st respondent.

27. The 1st and 2nd respondent's at paragraph 10 of the replying affidavit admit there used to be a lease agreement with the defunct Kenya Planters Cooperative Union Ltd which expired on 31.3.2019 over **L.R No. Meru/Municipality/T. 472**.

28. At paragraph 30 of the replying affidavit, it is admitted by the respondents the circumstances leading to the takeover of the suit premises by the 1st respondent following the change of law on restructuring of the coffee sector, through the **Cherry Fund Regulations 2020**.

29. Consequently, my finding is that the petition was brought in public interest and on matters which could not be said to have been farfetched, frivolous, hopeless or out to annoy the respondents so as to incur unnecessary costs of litigation.

30. In *Jasbir Singh Rai & 3 others –vs- Tarlochan Singh Rai & 4 others [2014] eKLR* the court held:

“It emerges that an award of costs would normally be guided by the principle that costs follow the event: the effect being that the party who calls forth the event by instituting suit, will bear the costs if the suit fails; but if this party shows legitimate occasion; by successful suit, then the defendant or respondent will bear the costs. However, the vital factor in setting the preference is judiciously exercised discretion of the court, accommodating the special circumstances of the case, while being guided by the ends of justice. The claims of public interest will be a relevant discretion, as will also be the motivation and the conduct of the parties, prior to, during and subsequent to the actual process of litigation.”

Although there is eminent good sense in the basic rule of costs, that costs follow the event – it is not an invariable rule and, indeed the ultimate factor on award or non-award of costs is the judicial discretion. It follows, therefore, that costs do not, in law constitute an unchanging consequence of legal proceedings.”

31. The petition is being withdrawn after the respondents have filed a response to the petition. An interlocutory application was heard and determined on 19.8.2020. At the time petitioners gave the notice of withdrawal, parties had not complied with Order 11 and or set the matter down for hearing.

32. The reasons for the withdrawal as stated above are that petition had been overtaken by events and circumstances had changed given the change of the law, so as to restructure the coffee sub-sector for the benefit of Kenyans in general and the coffee farmers in particular.

33. Applying the principle in *Jasbir Singh Rai* case that costs follow the event, the question is whether the event in which costs follow has crystallized and or ripened in this petition. The petition is said and admittedly so has been overtaken by events and change of circumstances beyond the petitioners leading to creation of the 1st respondent for and on behalf of the welfare of the petitioners and coffee farmers at large.

34. Both parties as indicated above from the pleadings are intertwined and therefore it cannot be said any of them has lost or won in the dispute.

35. Guided by the reasoning by the Supreme Court of Kenya in *Baridi Felix Mbevo –vs- Musee Mati & 2 others [2018] eKLR*, my inevitable conclusion is that the petition herein be and is hereby withdrawn with no order as to costs.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU THIS 16TH DAY OF FEBRUARY, 2022

In presence of:

Ken Muriuki for petitioners

Gitionga Muriuki – absent

Court Assistant - Kananu

HON. C.K. NZILI

