



Precious Gardens Residents Association v Precious Heights Ltd & 4 others (Environment & Land Petition 51 of 2015) [2022] KEELC 51 (KLR) (26 May 2022) (Judgment)

Neutral citation: [2022] KEELC 51 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ENVIRONMENT & LAND PETITION 51 OF 2015

LN MBUGUA, J

MAY 26, 2022

**IN THE MATTER OF AN APPLICATION UNDER ARTICLES
2,19,22(1),23,24,35,40,43 AND 46 OF THE CONSTITUTION OF KENYA**

AND

**IN THE MATTER OF THE ENFORCEMENT OF THE CONSTITUTIONAL RIGHT
OF ACCESS TO INFORMATION AS ENSHRINED IN THE CONSTITUTION IN SO
FAR AS THE SAID RIGHT UNDER ARTICLE 35 CONTINUES TO BE VIOLATED**

AND

**IN THE MATTER OF THE ENFORCEMENT OF THE CONSTITUTIONAL RIGHT OF
ACCESSIBLE AND ADEQUATE HOUSING AS ENSHRINED IN THE CONSTITUTION IN
SO FAR AS THE SAID RIGHT UNDER ARTICLE 43(B) CONTINUES TO BE VIOLATED**

AND

**IN THE MATTER OF THE ENFORCEMENT OF THE CONSTITUTIONAL RIGHT
OF CONSUMERS TO GOODS AND SERVICES OF REASONABLE QUALITY AND
TO THE ELC. PETITION NO.51 OF 2015(JUDG.)PAGE 1 OF 7 INFORMATION
NECESSARY FOR THEM TO GAIN FULL BENEFITS FROM GOODS AND SERVICES IN
SO FAR AS THE SAID RIGHT UNDER ARTICLE 46 CONTINUES TO BE VIOLATED**

AND

**RULE 4 OF THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS
AND FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULE OF
2012 AND ALL OTHER ENABLING POWERS AND PROVISIONS OF THE LAW**

AND

**IN THE MATTER OF SECTION 7 OF THE SECTIONAL PROPERTIES
ACT NO. 21 OF 1987 IN THE MATTER OF APPLICATION**

BETWEEN

PRECIOUS GARDENS RESIDENTS ASSOCIATION PETITIONER



AND

PRECIOUS HEIGHTS LTD	1ST RESPONDENT
PROPERTY POINT LTD	2ND RESPONDENT
HOUSING FINANCE DEVELOPMENT AND INVESTMENT LTD	3RD RESPONDENT
NATIONAL CONSTRUCTION AUTHORITY	4TH RESPONDENT
NAIROBI CITY COUNTY GOVERNMENT	5TH RESPONDENT

JUDGMENT

1. This judgment only relates to the issue of costs. The Petitioners are a Residents Association and owners/occupier of housing units known as Precious Gardens. The 1st Respondent was the vendor of the housing units erected on Land Parcel No. Dagoretti/Riruta/6809 while 2nd and 3rd Respondents were the developers/financiers of the apartments. The 4th Respondent is the National Construction Authority while 5th Respondent is the County Government of Nairobi.
2. Vide a Petition dated October 4, 2019, the Petitioners sued the Respondents seeking orders inter alia to be supplied with financial statements, bank statements, board minutes, utility documents, building plans etc.
3. Notice of appointments for the Respondents (save 4th Respondent) were promptly filed but I have not seen any responses to the Petition.
4. On May 18, 2020 Counsel for Plaintiff informed the court that there had been talks with a view to resolving the dispute. The court gave a mention date for July 27, 2020 “to record a settlement”. Come the date July 27, 2020 and only counsel for 1st – 3rd Defendants was present. The court gave orders that: “The Petition herein shall be heard on November 19, 2020”.
5. The case was however not heard on 19.11.2020 and another date was given as June 3, 2021. On 3rd June 2021, counsel for 1st-3rd Respondents addressed the court as follows: “The issue in this suit is largely resolved. The only outstanding issue relate to costs. We request for time to resolve the issue of costs”
Counsel for Petitioner had then responded that; “That is the position”.
The court gave another date of July 6, 2021 to record a settlement.
6. On July 6, 2021 directions were given for parties to canvas the issue of costs through affidavits and written submissions.
7. On January 19, 2022, Counsel for Petitioner addressed the court as follows: “Case is settled save on issue of costs” of which counsel for 1st Defendants responded; “That is the position.” The court proceeded to mark the suit as settled save on issue of costs.
8. I have considered the averments set forth by the parties. The Petitioners contend that when 1st – 3rd Respondents were served with the court papers and even before responding to the Petition, the said Respondents commenced the handover process of the full management of the estate to the owners (Petitioners). Thus the proceedings were terminated at an early.



9. In the supreme court of *Baridi Felix Mbevo v Musee Mati & 2 others* (2021)eKLR, the court reiterated its findings in *Jasbir Singh Rai & 3 others v Tarlochan Singh Rai & 4 others* (2014)eKLR on costs as follows:

Kenya case of

“It emerges that the 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 the 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 costs.

However the vital factor in setting the preference is the judiciously-exercised discretion of the court, accommodating the special circumstances of the case, while being guided by the end of justice.....”

10. In the suit at hand, the parties did not give the court a sneak preview of the terms of their settlement. They simply stated that the dispute was resolved. I have also considered that the resolution of the dispute occurred at the infancy stage of the suit, and no responses to the petition had even been filed.
11. In that regard and in order to meet the ends of justice, I exercise my discretion in directing that each party bears their own costs of the suit.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 26TH DAY OF MAY, 2022 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

M/S Kioko holding brief for Mr. Kibiku for Petitioners

M/S Muthee for the 1st and 2nd Respondents

Court Assistant: Eddel.

