



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL DIVISION**

**CIVIL CASE NO. 300 OF 1999**

1. **BENJAMIN MUSEMBI NGANDA**  
2. **JOSEPHINE MUTHINI NGANDA.....PLAINTIFFS**

**VERSUS**

1. **BAKULESH CHANDRAKANT JANI**  
2. **CITY COUNCIL OF NAIROBI .....DEFENDANTS**

**R U L I N G**

1. On 20<sup>th</sup> December 2011 this suit was marked withdrawn. The issue of costs was left to Court to determine. Submissions on the same were made for the Plaintiffs and the 2<sup>nd</sup> Defendant. There was no appearance for the 1<sup>st</sup> Defendant during arguments on costs despite service of notice. I have considered the arguments made.
2. The withdrawal of the suit by the Plaintiffs was informed by the fact, as submitted by their learned counsel, that the suit property was sold by a third party in the year 2007, a financial institution, in exercise of its statutory power of sale. The substratum of the suit thus disappeared without the Plaintiffs' fault. But it was quickly conceded that it was not the 2<sup>nd</sup> Defendant's fault either!
3. For the 2<sup>nd</sup> Defendant it was submitted that costs follow the event, and in this case there was no cause to deny the 2<sup>nd</sup> Defendant its costs.
4. Under **Section 27(1)** of the Act costs are at the discretion of the Court or Judge. However, under the **proviso** to that subsection, costs of any action, cause or other matter or issue shall follow the event unless the Court or Judge shall for good reason otherwise order.
5. The event here is the withdrawal of the suit, **not** the reason for the withdrawal. The Plaintiffs having withdrawn their suit they must bear the costs thereof. The Plaintiffs appear to appreciate this legal position as their learned counsel stated during arguments that they have pleaded for the Defendants' kind understanding on the issue of costs to no avail.
6. I find no good reason to deny the 2<sup>nd</sup> Defendant its costs of the suit and I award the same. I make no order as to costs of the 1<sup>st</sup> Defendant. It is so ordered.

**DATED AND SIGNED AT NAIROBI THIS 3<sup>RD</sup> DAY OF SEPTEMBER 2013**

**H. P. G. WAWERU**

**JUDGE**

**DELIVERED AT NAIROBI THIS 5<sup>TH</sup> DAY OF SEPTEMBER 2013**