



REPUBLIC OF KENYA



**Runo & another v Muriithi & 7 others (Environment & Land Case
12 of 2019) [2022] KEELC 2495 (KLR) (30 June 2022) (Ruling)**

Neutral citation: [2022] KEELC 2495 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAHURURU
ENVIRONMENT & LAND CASE 12 OF 2019**

YM ANGIMA, J

JUNE 30, 2022

BETWEEN

DAVID KAMUNYA RUNO 1ST PLAINTIFF

WILSON WAMBUGU NDERITU 2ND PLAINTIFF

AND

ELISHIBA MUTHONI MURIITHI 1ST DEFENDANT

RICHARD MURAGE 2ND DEFENDANT

LUCY NJERI 3RD DEFENDANT

SAMUEL MWANGI 4TH DEFENDANT

ALICE NYAWIRA 5TH DEFENDANT

HELLEN MURIITHI 6TH DEFENDANT

LAND REGISTRAR, LAIKIPIA COUNTY 7TH DEFENDANT

ATTORNEY GENERAL 8TH DEFENDANT

RULING

1. By a consent recorded by the parties on 01.03.2022 the Plaintiffs withdrew the suit against the 1st – 7th Defendants. As the parties did not agree on the issue of costs, they agreed to have the award of costs determined by the court. The parties further agreed to canvass the issue through written submissions. The material on record shows that the Plaintiffs filed their submissions on 14.03.2022 whereas the 1st – 7th Defendants filed theirs on 22.04.2022. The Attorney General did not file any submissions seeking costs of the suit.



2. The Plaintiffs submitted that whereas the award of costs was at the discretion of the trial court, the court should depart from the general rule stipulated in the proviso to Section 27 of the *Civil Procedure Act* (Cap.21) and direct that each party to the suit should bear his own costs since the parties were family members and the circumstances which led to the withdrawal of the suit were beyond the control of the Plaintiffs. The Plaintiffs relied upon the case of *Cecilia Karuru Ngayu –vs- Barclays Bank of Kenya & Another* [2016] eKLR in support of their submissions.
3. The 1st – 7th Defendants, on the other hand, relied upon Section 27 of the *Civil Procedure Act* and urged the court to follow the general principles and award the Defendants costs of the withdrawn suit. The Defendants also relied upon the case of *Cecilia Karuru Ngayu –vs- Barclays Bank of Kenya & Another* (supra). The court was urged to examine the conduct of the Plaintiffs in filing the suit against their ailing mother and their own siblings and condemn them to pay costs of the suit. The Defendants also cited the cases of *John Ndungu Muriithi –vs- Gideon Karegwa Ndungu & 5 Others* [2006] eKLR and *Paul Kirima –vs- Delfina Kathiri* [2019] eKLR support of their submissions.
4. The parties are in agreement that the applicable statutory provisions on the award of costs are to be found in Section 27(1) of the *Civil Procedure Act* which stipulates as follows:

“(1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers:

Provided that the 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 parties are also in agreement on the factors to be considered by the court in making an award on costs. Those factors were considered in the case of *Cecilia Karuru Ngayu –vs- Barclays Bank of Kenya & Another* (supra) which was cited by counsels on both sides. In the said case the High Court summarized the factors as follows:

“To my mind, in determining the issue of costs, the court is entitled to look at, inter alia, (i) the conduct of the parties (ii) the subject of litigation (iii) the circumstances which led to the institution of the proceedings (iv) the events which eventually led to their termination (v) the stage at which the proceedings were terminated (vi) the manner in which they were terminated (vii) the relationship between the parties and (viii) the need to promote reconciliation amongst the disputing parties pursuant to Articles 159(2) (c) of *the Constitution*. In other words, the court may not only consider the conduct of the parties in the actual litigation, but the matters which led to the litigation, the eventual termination thereof and the likely consequences of the order for costs.”
6. What the parties were not agreeing upon was the application of those factors to the circumstances of this suit. The court has taken into account of the factors which led to the filing of the suit and the circumstances which led to its termination. The parties are likely to pursue resolution of the property dispute before the Succession Court under the *Law of Succession Act* (Cap.160). The court has noted that the Plaintiffs and the 1st – 7th Defendants are relatives and members of the same family. There is



need to promote healing and reconciliation amongst members of the family. The court is thus inclined to agree with the Plaintiffs' submission that this is a fit case for the court to depart from the general principle that costs shall follow the event.

7. Accordingly, the court is persuaded that the appropriate order to make in the circumstances of this case is for each party to bear his own costs. It is hereby ordered that each party shall bear his own costs of the withdrawn suit.

It is so ordered.

RULING DATED AND SIGNED AT NYAHURURU AND DELIVERED VIA MICROSOFT TEAMS PLATFORM THIS 30TH DAY OF JUNE, 2022.

In the presence of:

Ms. Mburu holding brief for Ms. Njeri Wamithi for the 1st – 7th Defendants

N/A for the Plaintiffs

N/A for the Attorney General for the 8th & 9th Defendants

C/A - Carol

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Y. M. ANGIMA

JUDGE

