



REPUBLIC OF KENYA



KENYA LAW
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**Ngaruiya & 8 others v Maha Properties Ltd (Environment & Land
Case 634 of 2017) [2022] KEELC 2957 (KLR) (23 June 2022) (Ruling)**

Neutral citation: [2022] KEELC 2957 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 634 OF 2017**

**LN MBUGUA, J
JUNE 23, 2022**

BETWEEN

**MUNGAI NGARUIYA 1ST PLAINTIFF
KENNETH KIMATHI NGAINE 2ND PLAINTIFF
WANJIKU MUNGAI NGARUIYA 3RD PLAINTIFF
LUCY WAMBUI MBUGUA 4TH PLAINTIFF
NJERI MUNGAI NGARUIYA 5TH PLAINTIFF
ASUMPTA WANGARI MURIITHI 6TH PLAINTIFF
FORTY EIGHT RIVERSIDE DRIVE LIMITED 7TH PLAINTIFF
GARDEN CITY LIMITED 8TH PLAINTIFF
VITAS LIMITED 9TH PLAINTIFF**

AND

MAHA PROPERTIES LTD DEFENDANT

RULING

1. Coming up for determination is an unresolved question of costs. As early as November 26, 2018, the advocates for the parties informed the court that the issues in contest had been settled via an award of the arbitrator delivered on November 16, 2018. They desired the matter to be marked as settled. The issue as to who should bear the costs of the suit has persisted since then. On July 1, 2021, the court gave directions for the hearing on costs to be canvassed through affidavits and submissions. And on October 14, 2021, the court was informed that a consent had been recorded in a parallel suit HCCC No. E028 of 2019. That consent has since been availed to this court. The High Court matter was related to the current suit.



Analysis and determination

2. I have considered the record, the arguments advanced by the parties through their affidavits and submissions and I find that the single issue falling for determination is who should bear the costs of the suit since the matter is settled. The plaintiffs claim that they are entitled to costs, while defendant objected to this court's jurisdiction on matters costs stating that this is a function of the Deputy Registrar. I find that the question of which party should bears costs in a suit is one falling squarely on the court which is seized of the matter; see- *Super marine handling services Ltd vs Kenya Revenue Authority* [2010 eKLR,.
3. Section 27 (1) of the *Civil Procedure Act* provides that;

“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;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”.
4. It is not in contention that a consent dated October 6, 2020 was recorded and adopted as an order of Court in HCC Commercial Misc. Application No. E028 of 2019. I have gone through the entire document. The events resonating therefrom are that parties still have a long way to go in finalizing the sale of the Maisonettes, Each side still has obligations to accomplish with default clauses clearly stipulated in that consent.
5. In the case of *Cecilia Karuru Ngayu vs Barclays Bank of Kenya & another* [2016] eKLR, the court had this to say on matters costs:

“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 they were terminated, (vii) the relationship between the parties and (viii) the need to promote reconciliation amongst the disputing parties pursuant to article 159 (2) (c) of the constitution. (emphasize added). In other words the court may not only consider the conduct of the party 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. Guided by the analysis set out in the above case law, I find that it would not augur well if this court was to pronounce a winner by awarding costs to one party. In the circumstances, I direct that each party bears their own costs of the suit and the matter is hereby marked as settled.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 23RD DAY OF JUNE 2022 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Ondieki holding brief for M/s Wanga for Plaintiffs



Court Assistant: Eddel

