



Ethics and Anti-Corruption Commission v Wanjiku & 6 others (Environment & Land Case 145 of 2018) [2022] KEELC 2298 (KLR) (15 June 2022) (Ruling)

Neutral citation: [2022] KEELC 2298 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE 145 OF 2018**

**M SILA, J
JUNE 15, 2022**

BETWEEN

ETHICS AND ANTI-CORRUPTION COMMISSION PLAINTIFF

AND

**ANN WANJIKU 1ST DEFENDANT
MTAMWINI ENTERPRISES LIMITED 2ND DEFENDANT
OCEAN VIEW PLAZA LIMITED 3RD DEFENDANT
CHIEF LAND REGISTRAR 4TH DEFENDANT
OCEANVIEW PLAZA LIMITED 5TH DEFENDANT
MARETH MANILAL 6TH DEFENDANT
AVNI MARETH KOTAK 7TH DEFENDANT**

RULING

1. This suit was commenced through a plaint which was filed on 18 June 2019. The plaint, contained four defendants, respectively being Ann Wanjiku, Mtamwini Enterprises Limited, Ocean View Plaza Limited, and the Chief Land Registrar. The case of the plaintiff concerns the land parcel MN/I/9776. The plaintiff avers that this is public land that was wrongfully allotted to the 1st defendant. Subsequently, the 1st defendant transferred the title to the land to Mtamwini Enterprises Limited (2nd defendant) and there was another transfer to Ocean View Plaza Limited (3rd defendant). The plaintiff sought to have the title of the 3rd defendant cancelled. No appearance was entered to this original plaint, save for the 4th defendant, who did not oppose the plaintiff's suit, and the matter proceeded ex parte leading to judgment delivered on 10 March 2021. There followed an application to set aside this judgment filed by an entity identified as Oceanview Plaza Limited (note the distinction between Ocean View as two words and Oceanview as one word) and an issue of identity of who



was to be sued arose. There was demonstration that there are two companies, one Oceanview Plaza Limited and the other Ocean View Plaza Limited and arising therefrom I was persuaded to set aside the judgment. This culminated in an amended plaint which had 8 defendants. Apart from the original four defendants, there was added Oceanview Plaza Limited as 5th defendant, Maresh Manilal Kotak as 6th defendant, Avni Maresh Kotak as 7th defendants, and Vikram Chotalal Kalidas Kanji as 8th defendant. The 6th, 7th and 8th defendants were sued as directors of the 5th defendant. The 5th, 6th and 7th defendant appointed one counsel and the 8th defendant appointed separate counsel and filed a separate defence. In the defence, the 8th defendant denied the allegations of the plaintiff. He followed this up with an application dated 17 January 2022 asking that the suit against him be dismissed. Within that application, he averred that he is not, and has never been, a director of the 5th defendant. He averred that he was only appointed company secretary in the year 2018 and could not possibly have been involved in the transactions herein which took place in the year 1996. When the matter came up on 18 January 2022, Mr. Makori, learned counsel for the plaintiff, conceded to the application. He stated that they have now learnt that the 8th defendant was only the Secretary of the company and he can be struck out of the suit. On that basis, the 8th defendant was struck out. There was contention on costs and I directed parties to make submissions on the same. I have taken note of the submissions made by counsel for the 8th defendant and counsel for the plaintiff.

2. Costs are covered under Section 27 of the *Civil Procedure Act*, which provides as follows :-

27. Costs



(1)	<p>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:</p> <p>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.</p>
(2)	<p>The court or judge may give interest on costs at any rate not exceeding fourteen per cent per annum, and such interest shall be added to the costs and shall be recoverable as such.</p>
	<p>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:</p> <p>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.</p>
	<p>The court or judge may give interest on costs at any rate not exceeding fourteen per cent per annum, and such interest shall be added to the costs and shall be recoverable as such.</p>

3. It will be seen from the above, that firstly, costs are in the discretion of the court, and secondly, that costs should follow the event unless for good reason the court otherwise orders. In our case, the plaintiff filed this suit seeking to recover what it deems to be public property. It is thus a suit filed in the public interest. Courts are generally lenient in awarding costs against a party who has filed a public interest



litigation, even when such party has lost the suit, so long as it is apparent that the party was acting in good faith and genuinely in the interests of the public.

4. I observe that the plaintiff has sued all parties that it believes were involved in the transactions that transferred the suit property. I cannot fault the plaintiff for doing so. I do not think that the inclusion of the 8th defendant in the suit was malicious or that there was any other agenda other than genuinely pursuing what the plaintiff contends is public property. I also note that the plaintiff graciously conceded its mistake upon realization that the 8th defendant is not a necessary party and did not contest the 8th defendant's application to be removed from the suit. Indeed, the involvement of the 8th defendant has been fleeting. I think that in those circumstances, it would be harsh to condemn the plaintiff to pay the costs of the 8th defendant.
5. In my view, the circumstances herein call for each party to bear his/her costs.
6. I therefore make no order as to the costs of the 8th defendant.
7. Orders accordingly.

DATED AND DELIVERED THIS 15 DAY OF JUNE 2022.

JUSTICE MUNYAO SILA

JUDGE

ENVIRONMENT AND LAND COURT AT MOMBASA

