



REPUBLIC OF KENYA



KENYA LAW
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**Nkoroi v Karigu (Legal Representative of The Estate of M'Rutere M'Magana (Deceased) & another
(Environment & Land Case 82 of 2005) [2022] KEELC 3847 (KLR) (27 July 2022) (Ruling)**

Neutral citation: [2022] KEELC 3847 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND CASE 82 OF 2005
CK NZILI, J
JULY 27, 2022
IN THE MATTER OF LAND PARCEL NO. IGOKI/KINORO/590
AND
IN THE MATTER OF ORDER XXXVI OF THE CIVIL PROCEDURE RULES

BETWEEN

SEBASTIAN NKOROI PLAINTIFF

AND

**MADALINA KARIGU (LEGAL REPRESENTATIVE OF THE ESTATE OF
M'RUTERE M'MAGANA (DECEASED)) 1ST DEFENDANT**

ZAKARIA KIRUJA 2ND DEFENDANT

RULING

1. When this matter came up for hearing on March 17, 2022, counsel for the plaintiff Miss Mbubuya sought leave to withdraw the suit against the 1st defendant on the basis that the suit has abated as against the 2nd defendant, who was the registered owner of the suit land and that the prayers sought in the plaint could not be granted without the participation of his legal representative.
2. Counsel was of the view proceeding with the matter against the 1st defendant would be an exercise in futility under the current scenario. Counsel submitted that the plaintiff only came to learn of the death of the 2nd defendant when it was too late. She therefore sought for the withdrawal of the suit with no order as to costs.
3. Mr Mburugu counsel for the 1st defendant did not oppose the withdrawal subject to the payment of costs since the suit against the 2nd defendant was dismissed due to inaction on the part of the plaintiff. Counsel submitted that the 1st defendant has been in court since 2005 during which period he has



suffered substantial prejudice, incurred expenses and costs, hence it was only that fair that costs be granted.

4. Section 27 of the *Civil Procedure Act* provides that costs of and incidental to all suits shall be in the discretion of the court provided that costs of any action, cause or matter shall follow the event, unless the court shall for good reasons order otherwise.
5. In this suit, the plaintiff filed an originating summons dated August 29, 2005 seeking for among others; whether there was collusion between the defendants to defeat justice in Meru HCC No 224 of 1989 and for the cancellation of the name of the 2nd defendant as the owner of LR No Igoji/Kinoro/590 in favour of the plaintiff. The originating summons also referred to Nkubu SRMCC No 48 of 2000.
6. After the initial defendant passed on, the plaintiff through an application dated August 28, 2007 sought to have Magdalene Karigu Rutere appointed a legal representative and joined as a party to these proceedings. Eventually the 1st defendant came on board and filed a replying affidavit sworn on January 29, 2008 stating that on September 21, 2000 her late husband sold the suit land to the 2nd defendant, who on October 23, 2000 subdivided and disposed off Parcel No Igoji/Kianjogu/390 as per the annexed copy of green card, hence she saw no justification why he was sued in the first instance, since as at September 22, 2000 he was not the registered owner but the 2nd defendant.
7. Given the foregoing it is quite obvious the 1st defendant has been prejudiced by the pendency of this suit. The plaintiff knew that the 1st defendant was not the registered owner of the suit land at the time he brought the suit but continued sustaining the suit against her notwithstanding a clear averment to the contrary. See *Gedion K Konchellah vs Julius Sunkuli* (2018) eKLR.
8. In the circumstances I do not see any justification to deviate from the general rule that costs follow the event and deny the 1st defendant costs of the suit. See *Jasbir Singh Rai & 3 others v Tarlochan Singh Rai & 4 others* [2014] eKLR.
9. In sum the suit is marked as withdrawn with costs to the 1st defendant only. Orders accordingly.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT THIS 27TH DAY OF JULY, 2022

In presence of:

C/A: Kananu

Mburugu for 1st defendant

Mbubuya for plaintiff

HON. C.K. NZILI

ELC JUDGE

