



REPUBLIC OF KENYA



**Kimathi & 2 others v General & 3 others (Environment & Land Case
E006 of 2021) [2022] KEELC 2613 (KLR) (20 July 2022) (Ruling)**

Neutral citation: [2022] KEELC 2613 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND CASE E006 OF 2021**

**CK NZILI, J
JULY 20, 2022**

BETWEEN

**FRANCIS KIMATHI 1ST PLAINTIFF
JACOB NTURIBI 2ND PLAINTIFF
PETER NTURIBI 3RD PLAINTIFF**

AND

**ATTORNEY GENERAL 1ST DEFENDANT
LAND REGISTRAR MERU CENTRAL 2ND DEFENDANT
RAEL NYAWIRA NYAMU 3RD DEFENDANT
LATIF M'IKIARA 4TH DEFENDANT**

RULING

1. By a notice of motion dated March 25, 2022 the plaintiffs sought to withdraw the suit with effect from March 28, 2022. When the matter came up on May 16, 2022, counsel for the 3rd defendant told the court that his client had no objection to the withdrawal of the suit subject to the payment of costs.
2. Miss Gikundi counsel urged the court to find that the plaintiffs were initially acting in person and should not be made to suffer due to ignorance of the law. The court proceeded to allow the withdrawal and deferred a ruling on costs.
3. The general principle under Section 27 of the *Civil Procedure Act* is that costs follow the event.
4. In this matter the 3rd defendant submits they have incurred costs by filing the defence. By an application dated September 26, 2021, the 3rd defendant sought to be joined as an interested party in this suit. The court proceeded to allow the application vide a ruling dated January 26, 2022 following which the



plaint was amended. The interested party to file a response within 21 days. The amended plaint was filed on February 16, 2022 and summons issued on March 4, 2022.

5. Prior to these amendments the 3rd defendant had with leave of court filed a defence dated December 20, 2021, whereas the 1st and 2nd defendant had only filed a preliminary objection which the court determined.
6. In *Republic vs Rosemary Wairimu Munene (ex parte applicant) Ihururu Dairy Farmers Cooperative Society Ltd* (2014) eKLR, the court held that the principle that costs follow the event is not to be used to penalize the losing party but rather to compensate a successful party for the trouble taken in prosecuting or defending the suit.
7. In *Jasbir Singh Rai & 3 others vs Tarlochan Rai & 4 others* (2014) eKLR, the Supreme Court of Kenya held good reasons for departing from the general rule would include public interest and the circumstances of the case.
8. In *Cecilia Karuru Nganga vs Barclays Bank & another* (2016) eKLR, the court set out the good reasons to include the conduct of the parties, the subject of litigation, events leading to the termination, manner of termination, relationship between the parties and the need to promote reconciliation.
9. Applying the above principles, the reason(s) given for the withdrawal of the suit is because the parties were acting in person and filed the suit out of ignorance of the law.
10. As indicated above it is the 3rd defendant and or the interested party who sought to be enjoined as a party to this suit.
11. Soon thereafter joining the suit, the plaintiffs sought to withdraw the suit which the 3rd defendant/interested party has not objected to.
12. Similarly, no summons to enter appearance have been served upon the 3rd defendant/interested party by the plaintiffs.
13. Given the circumstances of this matter, I find that there are good reasons to depart from the general rule since none of the parties in this suit has been successful for the suit has only been withdrawn. Consequently, each party shall bear their own costs.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT THIS 20TH DAY OF JULY, 2022

In presence of:

Gikundi for plaintiff

Kieti for 1st and 2nd respondent

Ndubi for 3rd interested party

HON. C.K. NZILI

ELC JUDGE

