



REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT MACHAKOS  
Civil Case 81 of 2006

NGUI MULANGU .....PLAINTIFF

VERSUS

NDETO MUTAVI.....DEFENDANT

RULING

1. On 22.4.2009, the Plaintiff decided to withdraw the present suit after seeing a copy of the District Land Registrar's report filed on 28.11.2008.

2. The Defendant sought costs and his argument is that costs follow the event and there must be a sufficient cause why they should not be paid to a party who has entered appearance and filed a Statement of Defence in which he does not admit the claim.

3. The Plaintiff's argument is that the Registrar found that in fact the disputed portion of land belongs to one Mutavi Ndunda and not any of the parties and since none has succeeded, then each should bear its own costs. Section 27 of the Civil Procedure Code provides as follows;

*“(1) Subject to such conditions and limitations as may be prescribed, and the 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 exercises 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 orders;*

*(2) the court or judge may give interest on costs at any rate not exceeding fourteen per cent per annum, and such interests shall be added to the costs and shall be recovered as such.”*

4. The phrase “costs follow the event” was also used by *Simpson J* in Republic vs Nairobi Business Premises Rent Tribunal & 2 others ex-parte Karasha [1976] – 1980] KLR 1263 and he declined to depart from the general rule. In this case, there is no reason why I should do so. The Plaintiff instituted the suit and sought several orders against the defendant who filed a Defence and *inter alia* stated that the dispute should have been dealt with as a boundary issue and that the relevant law should have been followed. Further, that the suit was premature.

5. Once the Plaintiff realized that he had sued the wrong party and that he had no cause of action, he withdrew the suit and I am clear in my mind that a Defendant, innocent as she turns out to be, must be compensated for her burden caused solely by the Plaintiff. It is important to add that she hired an advocate and incurred costs. I see no reason to deny her the right to recover those costs.

6. The costs of this suit shall therefore be paid to the Defendant by the Plaintiff.

7. Orders accordingly.

Dated and delivered at Machakos this 9<sup>th</sup> day of October 2009.

**Isaac Lenaola**

**Judge**

In the presence of; Mutia h/b for Mr. Muithya for Applicant

Mr.Makau for Respondent

**Isaac Lenaola**

**Judge**