



Samora Sikalie (Chair) Karen Langa'ta District Association & 2 others v Director General , National Environment Management Authority & another (Environment & Land Case E177 of 2022) [2022] KEELC 14486 (KLR) (27 October 2022) (Ruling)

Neutral citation: [2022] KEELC 14486 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E177 OF 2022
LN MBUGUA, J
OCTOBER 27, 2022**

BETWEEN

**SAMORA SIKALIE (CHAIR) KAREN LANGA'TA DISTRICT ASSOCIATION 1ST PLAINTIFF
DON SMITH (TREASURER) KAREN LANGA'TA DISTRICT ASSOCIATION 2ND PLAINTIFF
JAMES KARANJA (MEMBER) KAREN LANGATA DISTRICT ASSOCIATION 3RD PLAINTIFF**

AND

**THE DIRECTOR GENERAL , NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY 1ST DEFENDANT
PARLIAMENTARY SERVICE COMMISSION 2ND DEFENDANT**

RULING

1. This suit was commenced vide a plaint dated May 18, 2022, but the same was withdrawn *vide* a Notice of withdrawal of suit dated June 7, 2022. On June 15, 2022, the 2nd Defendant prayed for costs of the suit. The court directed the parties to file written submissions on the issue of costs.
2. The Plaintiffs filed written submissions dated August 17, 2022 arguing that the suit is not frivolous since it was a public litigation matter touching on the right to a clean and healthy environment on their behalf and on behalf of the entire Karen-Lang'ata Residents in accordance with Section 258(1) and (2) of *the Constitution*, thus they should not be condemned to pay costs. They argued that the withdrawal of this suit was necessary in order for them to file ELC Petition No. E027 of 2022 against Nairobi City County and enjoin the 2nd Defendant as an Interested Party to facilitate consolidation of issues and to avoid multiplicity of suits based on new evidence that came into their possession.



3. In support of their case, the plaintiffs relied on the cases of *John Harun Mwau and 3 others v Attorney General and 2 others* [2012] eKLR, *Jasbir Singh Rai & 3 others v Tarlochan Singh Rai & 4 others* [2014] eKLR and *Brian Asin & 2 others v Wafula W. Chebukati & 9 others* [2017] eKLR.
4. The 2nd Defendant did not file written submissions.
5. The Principle regarding costs under Section 27 of the *Civil Procedure Act* is that costs are discretionary and they follow the event unless a good reason to depart from the general principle are proffered.
6. The 2nd Defendant retained the services of an Advocate, who not only filed documents but also appeared in Court albeit twice by the time of withdrawal of case. I however find that the Plaintiff's case was seeking to enforce environmental rights in accordance with Article 70 of *the Constitution* on behalf of the Residents of Karen Lang'ata District Association, thus the suit was not frivolous as it was a public interest litigation.
7. I have also taken into consideration that the lifespan of the suit was hardly a month old, thus it was promptly withdrawn at the infancy stage. In that regard, this court proceeds to exercise its discretion by giving an order that each party shall bear their own costs of the suit.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 27TH DAY OF OCTOBER, 2022 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

T. Lichuma holding brief for Lichuma for Plaintiffs

M/s Ngige holding brief for Angaya for 2nd Respondent

Court assistant: Eddel

