



**JM (Minor Suing through his Next Friend and Father JMT) v Cabinet Secretary,
Ministry of Tourism and Wildlife & another (Environment and Land Judicial
Review Case 47 of 2019) [2022] KEELC 15636 (KLR) (20 December 2022) (Ruling)**

Neutral citation: [2022] KEELC 15636 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE 47 OF 2019
LN MBUGUA, J
DECEMBER 20, 2022**

BETWEEN

**JM (MINOR SUING THROUGH HIS NEXT FRIEND AND FATHER
JMT) APPLICANT**

AND

**CABINET SECRETARY, MINISTRY OF TOURISM AND
WILDLIFE 1ST RESPONDENT**

THE ATTORNEY GENERAL 2ND RESPONDENT

RULING

1. On May 5, 2022, this suit was marked as settled. The ruling herein relates to the issue of costs, of which the parties have filed their submissions. The ex parte applicant avers that following a snake bite incident on October 16, 2014, he filed a claim of compensation before the County Wildlife Conservation and Compensation Committee which claim was rejected but was later allowed on appeal before the National Environmental Tribunal on October 25, 2018. The award given was for ksh. 1,000,0000.
2. The ex parte applicant then filed this suit seeking orders of mandamus to compel the respondents to pay out the compensation suit. The amounts were settled during the course of the suit. The ex applicant then filed a bill of costs which was apparently not objected to by the respondents, hence the bill before the Registrar should be allowed.
3. In support of his arguments, the ex parte applicant relied on various authorities including *Kenneth Kiplagat t/a Kiplagat & Associates v National Housing Corporation* [2005] eKLR, *Omulele & Tollo Advocates v Magnum Properties Limited* [2016] eKLR and *Joseph Oduor Anode v Kenya Red Cross Society* [2012] eKLR.



4. The respondents did not file and serve their submissions by November 25, 2022 as directed by the court.
5. The provisions of section 27 of the Civil Procedure Act, stipulates that:
 - “(1) 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.....”
6. In the Supreme Court of Kenya case of Baridi Felix Mbevo v Musee Mati & 2 others [2021] eKLR, it was stated that;
 - “It is trite that we have an inherent jurisdiction to make orders on costs. In the *Jasbir Singh Rai case* at paragraph 11, This court established that costs fall under the inherent powers of the court”
7. The orders given by this court on May 5, 2022 after the matter was marked as settled reads as follows:
 - “The issue of costs is to be agreed upon by the parties failure to which the court shall determine the same. Mention on October 25, 2022”.
8. Come the date of October 25, 2022 and the counsel for the exparte-applicant addressed the court as follows; “we can file submissions on costs” and this was acceptable to the rival party.
9. It is clear that by November 25, 2022, the parties had not agreed on costs, and the proposal to file submissions was the fall back. That being the case, on what basis did the exparte applicant proceed to tax their bill of costs before the Deputy Registrar? None!.
10. I have keenly perused the record. I find that the respondents came into the picture on February 24, 2020 and immediately, they set in motion the process of settlement. To this end, there were no protracted legal battles herein. Indeed the matter remained at the leave stage, thus the Substantive Judicial Review Motion did not see the light of day!
11. In the circumstances and taking into account the provisions of article 159 (2) (c) of the Constitution, I direct that each party bears their own costs of the suit.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 20TH DAY OF DECEMBER, 2022 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

M/s Mugo holding brief for Mr. Wambugu for Applicant

Court assistant: Eddel

