



**Kiberenge v Warunga & 2 others (Environment & Land Case
E004 of 2024) [2025] KEELC 4006 (KLR) (22 May 2025) (Judgment)**

Neutral citation: [2025] KEELC 4006 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA
ENVIRONMENT & LAND CASE E004 OF 2024**

EC CHERONO, J

MAY 22, 2025

BETWEEN

BENEDICT MASIKA KIBERENGE PLAINTIFF

AND

SIMIYU WENANI WARUNGA 1ST DEFENDANT

JOICE NASIMIYU WANYAMA 2ND DEFENDANT

THE LAND REGISTRAR 3RD DEFENDANT

JUDGMENT

1. The Applicant, Benedict Masika instituted this suit vide a plaint dated 19th March 2025 filed contemporaneously with a Notice of Motion application under certificate of urgency dated 19th March, 2025. When the said application was placed before me for directions, I directed to be served and the Respondent to file and serve their responses within 14 days from the date of service thereof. The Applicant was also granted leave to file and serve a Further/Supplementary affidavit, if need arise within 7 days upon service thereof.
2. In a Ruling delivered on 11th October 2025, the said application was dismissed with costs to the Respondents. On 05/02/2025, the Counsel for the Plaintiff sought to have this suit withdrawn with no order as to costs. The application was not opposed save for costs. Since the issue would not be agreed, the court directed the parties to file and exchange written submission on the same. At the expiry of the timelines given, only the 1st and 2nd Respondents filed submissions
1st and 2nd Defendants Submissions
3. The 1st and 2nd Defendants through the Firm of M/S Emmanuel Wanyonyi & Co. Advocates submitted the parties herein are relatives and ordinarily, costs are not awarded in matters involving relatives. However, the Plaintiff is a litigious person that does not care about relations. He submitted that it is



only just and fair that the 1st and 2nd Defendants are awarded costs. He argued that as we speak, the plaintiff has filed cases in Webuye, Kimilili and the instant suit and that they should not be punished by the actions of a person that hell bent to file cases left right and centre.

Analysis And Decision.

4. I have considered the pleadings of the parties and the submissions by the 1st and 2nd defendants/ Respondents. The Plaintiff who initiated these proceedings did not file submissions explaining why the suit should be withdrawn with no order as to costs. Section 27 of the [Civil Procedure Act](#) Cap 21 Laws of Kenya provides as follows;

‘27

- (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, and to give all necessary directions for the purposes aforesaid; and the fact the court or judge has no jurisdiction to try the suit shall be no bar to the exercise 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 order...”

5. Despite asking the parties to file submissions explaining whether special or exceptional circumstance exist to warrant this court determine by whom and to what extent such costs are to be paid, the Plaintiff failed thereby leaving this court with no choice but to order that costs follow the event. I find no reason to deny the defendants the costs of this suit.
6. The upshot of my finding is that this suit is hereby marked as withdrawn with costs to the 1st and 2nd Defendants.
7. Orders accordingly.

READ, DELIVERED AND SIGNED AT BUNGOMA THIS 22ND DAY OF MAY, 2025.

HON. E.C CHERONO

ELC JUDGE

In the presence of;

1. Plaintiff/Advocate-absent.
2. 1st Defendant-present.
3. 2d Defendant-absent.
4. Bett C/A.

BUNGOMA RULING ELCLC E004 OF 2024

