



**Njiri & another v Muchiri (Environment and Land Appeal
E020 of 2021) [2025] KEELC 3040 (KLR) (1 April 2025) (Judgment)**

Neutral citation: [2025] KEELC 3040 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND APPEAL E020 OF 2021**

JM ONYANGO, J

APRIL 1, 2025

BETWEEN

MARY WANJIRU NJIRI 1ST APPELLANT

BETH WAMBUI NJIRI 2ND APPELLANT

AND

CHRISTINE MUCHIRI RESPONDENT

JUDGMENT

1. The genesis of this appeal lies in a suit in Ruiru SPM L & E Case No. 58 of 2019 in which the Appellants instituted a suit against the Respondent for breach of contract following an agreement for sale of land between the Appellants and the Respondent. In the said agreement the Appellants being the registered owners of the parcel of land known as L.R No. 28318/25/534 I.R No. 150169 (hereinafter referred to as the suit property) agreed to sell the suit property to the Respondent at an agreed purchase price of Kshs. 2,500,000. The Respondent paid two instalments amounting to Kshs. 1,800,000 leaving a balance of Kshs 700,000. In their plaint, the Appellants prayed that the Respondent be compelled to perform her part of the agreement by paying the balance of the purchase price. They also prayed for damages for breach of contract, interest and costs.
2. The Respondent filed a Defence and Counterclaim in which she denied the Appellants' claim and prayed that the Appellants be compelled to execute the transfer of the suit properties in her favour and release the completion documents in exchange for the balance of the purchase price.
3. When the matter came up for hearing on 8th December 2020 the parties recorded a consent in the following terms:
 - i. That judgment be and is hereby entered in favour to the Plaintiffs against the Defendant for the undisputed sum of Kshs.700,000.



- ii. The Plaintiffs do release all the completion documents necessary to effect the transfer of the suit property to the Defendant.
 - iii. Parties do file written submission in respect of the issue of costs and interest.
4. The trial court then proceeded to write its judgment on the issue of costs and interest. In her judgment delivered on 29th January 2021 the trial magistrate declined to award the Appellants interest and costs.
5. Being aggrieved by the said judgment, the Appellants filed this appeal raising the grounds that the learned trial Magistrate erred in law and in fact in:
 - i. Failing to discern and appreciate that the Defendant had defaulted in payment from a defined date and the Plaintiffs were deserving of interest from such date.
 - ii. Failing to discern the successful party to the litigation and awarding costs of the suit accordingly.
 - iii. Failing to determine whether the Appellants were deserving of damages for breach of contract.
 - iv. Failing to make a determination on the alternative prayer for rescission of the contract.
 - v. Injudiciously exercising her discretion to refuse to award costs to a party whose suit included a pre-litigation demand vis a vis one who did not
 - vi. Injudiciously purporting not to be able to discern the date of default in payment by the Respondent and failing to award interest from the date of filing suit.
 - vii. Striking out a material party for no good cause shown.
6. The Respondent opposed the appeal through their Grounds of Opposition dated 22nd July 2024 in which they agreed with the findings of the trial magistrate.
7. The appeal was canvassed by way of written submissions although by the time of writing this ruling only the Appellant's submissions were on record.

Analysis and Determination

8. Having considered the Memorandum of Appeal, the entire record of Appeal and the Appellant's submissions, the following issues fall for determination:
 - i. Whether costs and interest ought to have been awarded to the Appellant
 - ii. Whether the trial magistrate ought to have awarded damages for breach of contract.
9. The provision governing the award of costs is section 27 (1) of the *Civil Procedure Act* which provides as follows:

“Section 27 (1). “Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being 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 shall follow the event unless the court or judge shall for good reason otherwise order”.

10. In Republic v Rosemary Wairimu Munene Ex-parte Applicant v Ihururu Dairy Farmers C-operative Society Ltd Judicial Review Application No. 16 of 2014 the Court observed as follows:

“The issue of costs is the discretion of the court as provided under the above section. The basic rule on attribution of costs is that costs follow the event.... It is well recognized that the principle that costs follow the event is not to be used to penalize the losing party, rather it is for compensating the successful party for the trouble taken prosecuting or defending the case.”

11. In determining whether or not to award costs, the court is entitled to consider various factors which were discussed in the case of case of Cecilia Karuru Nagayu v Barclays Bank of Kenya & Another (2016) eKLR where the court observed as follows:

“...in determining the issue of costs the court is entitled to look at inter alia(i) the conduct of the parties, (ii) the subject of litigation, (iii) the circumstances which led to the institution of proceedings, (iv) the events which eventually led to their termination, (v) the stage at which the proceedings were terminated, (vi) the relationship between the parties, (vii) the need to promote reconciliation amongst disputing parties pursuant to Article 159 (2) (c) of *the Constitution*. In other words, the court may not only consider the conduct of the party in the actual litigation, but matters which led to the litigation, the eventual termination thereof and the likely consequences of the order for costs.”

12. As to whether costs can be awarded where a suit is not contested, Justice (Retired) Kuloba in his book Judicial hints on Civil Procedure, 2nd Edition (Law Africa), 2011, page 94 observed as follows:

“the fact that the unsuccessful party did not contest the case is not in itself a ground for refusal of costs but it is a factor that can be taken into account if other good reasons exist.”

13. What can be discerned from the above authorities is that the decision whether or not to award costs is entirely within the discretion of the court, which discretion must be exercised judicially taking into account the circumstances of each case.

14. In the instant case the trial magistrate in her discretion decided not to award costs as she was of the view that there was no outright successful party in this case. In order to determine whether the trial magistrate exercised her discretion judicially, it is important to consider all the circumstances of this case. The Appellants filed suit against the Respondent because she had failed to honour the terms of the agreement. Whereas the agreement provided that she was to pay the balance of the purchase price within 90 days from 28.2.2018, the Respondent had by June 2019 not made the payment forcing the Appellants to file suit.

15. In her Defence and Counterclaim, the Respondent faults the Appellants for failing to release the completion documents in exchange for the balance of the purchase price which she claims she had deposited with her advocates. It is instructive to note that Respondent does not disclose when she deposited the balance of the purchase price with her advocate.



16. What is not in dispute is that the Respondent waited for over a year before communicating that she had deposited the balance of the purchase price with her advocate. The record shows that the consent was finally recorded on 8.12.20 after protracted negotiations.
17. Taking into account the circumstances which led to the institution of the suit, the number of applications filed, the numerous court attendances and the fact that the matter was settled more than a year after it was filed, on the date fixed for hearing, I am of the view that the Appellants are entitled to costs.
18. With regard to interest, Section 26(1) of the Civil Procedure Rules provides as follows:

“Where and in so far as a decree is for payment of money, the court may in the decree, order interest at such rate as the court deems reasonable to be paid on the principal sum adjudged on the principal sum for any period before the institution of the suit, with further interest at such rate as the court deems reasonable on the aggregate so adjudged from the date of the decree to the date of payment or to such earlier date as the court deems fit.”
19. I am further guided by the case of *Premlata Musa V Peter Mbiyu* (1965) E.A 592 cited in the case of *Madison Insurance Company Limited v Mung’ot* (Civil Appeal No. 215 of 2020) [2022] KEHC 9800 KLR where the court observed that an award of interest on the principal sum is generally meant to compensate a plaintiff for deprivation of any money or specific goods through the wrongful act of a defendant. See also *Emmanuel Kuria Wa Gathoni v Commissioner of Police and Another* (2018) eKLR.
20. In their Complaint, the Appellants prayed for interest at commercial rates on the sum of Kshs.700,000 from the date of default. According to the sale agreement, the balance of Kshs. 700,000 was to be paid by 28.5.2018. However, the Respondent was issued with a completion notice dated 9.8.2018 to pay the outstanding balance within 14 days. The said notice took effect on 23.8.2018. The balance of Kshs.700,000 was eventually paid on 22.10.2020 when the parties entered into a consent. I therefore find and hold that the Appellants are entitled to interest at 14% from the 23.8.2018 to 22.10.2020. I am of the view that by failing to award the Appellants costs and interest, the trial magistrate did not exercise her discretion judicially.
21. With regard to the issue of damages for breach of contract, I agree with learned counsel for the Respondent that the suit having been compromised by the parties, the court could not make a finding on the issue of damages or rescission of the contract as this would go against the spirit of the consent that had been entered into by the parties.
22. The upshot is that the appeal succeeds and the judgment dated 29th January 2021 is set aside or varied only to the extent that it relates to costs and interest. The same is substituted with the following orders.
 - a. That the costs of the suit shall be borne by the defendants.
 - b. The defendant shall pay interest on the sum of Kshs.700,000/= at 14% per annum from 23.8.2018 until 20.10.2020.
 - c. The Respondent shall bear the costs of this appeal.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 1ST DAY OF APRIL 2025.

.....
J. M ONYANGO



JUDGE

In the presence of:

1. Miss Muricho for the Appellant
2. No appearance for the Respondent

Court Assistant: Hinga

