



Josphat v Mwangi & 3 others (Environment and Land Appeal E040 of 2024) [2025] KEELC 4203 (KLR) (3 June 2025) (Ruling)

Neutral citation: [2025] KEELC 4203 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
ENVIRONMENT AND LAND APPEAL E040 OF 2024**

MN GICHERU, J

JUNE 3, 2025

BETWEEN

HESTON MAINA JOSPHAT APPELLANT

AND

MARY WAMBUI MWANGI 1ST RESPONDENT

HUMPHREY KAMAU MACHARIA 2ND RESPONDENT

BENJAMIN GACHUI NENE 3RD RESPONDENT

JOHN IRUNGU NENE 4TH RESPONDENT

(Being an Appeal from the Judgment of the Principal Magistrate's Court at Kangema (the Honourable Caroline Ndumia) dated 7th August, 2024 in the MC. ELC Case No.E005 of 2021)

RULING

1. On 5/3/2025, the Appellant's counsel made an oral application to withdraw the appeal herein. The 1st Respondent's counsel did not oppose the oral application for withdrawal but he prayed for costs. This ruling is on whether any costs are awardable to the 1st Respondent's Counsel.
2. The Appellant's counsel filed an affidavit dated 28-4-2025 in which she states as follows. One, she filed a memorandum of appeal on 9-9-2024 which she did not serve upon any of the Respondents. Two, after a series of discussions between her and the Appellant, she decided to withdraw the appeal vide a notice of appeal dated 16-12-2024. When the notice of withdrawal was filed on the e-filing portal, none of the Respondents had been mapped into the e-filing system. Three, the court served a mention notice via email on all the parties to appear before it for mention on 5-3-2025. It was after the service of the mention notice that the 1st Respondent's counsel was mapped into the e-filing system and by then, the appeal had already been withdrawn and the notice of withdrawal duly filed. Four, when the



1st Respondent's counsel became aware of the appeal it had already been withdrawn. For the above stated reasons, the 1st Respondent is not entitled to any costs.

3. Counsel for the 1st Respondent filed written submissions dated 6-3-2025 in which he urges as follows. Firstly, they had already taken instructions to defend the appeal. Secondly, counsel for the 1st Respondent made one appearance in court after the notice of withdrawal had been filed. For these two reasons, they pray for costs.

Counsel for the Appellant filed written submissions dated 28-4-2025 urging that the Court makes no order as to costs.

4. I have carefully considered the affidavit by the Appellant's counsel and the submissions by both sides. I find that the 1st Respondent as well as the other Respondents are not entitled to costs for the following reasons.

Firstly, the 1st Respondent's counsel has not been able to explain when he took instructions to defend the appeal if the notice of withdrawal of the appeal was filed before he had been mapped into the courts e-filing system. If he had not been mapped and he had not been served with the memorandum of appeal, he could not have been aware of the appeal in order to take instructions.

Secondly, unlike the Appellant's counsel who has filed an affidavit explaining the concatenation of events from the filing to the withdrawal of the appeal, the 1st Respondent's counsel has not filed any material to counter the credible and convincing evidence that he was not aware of the appeal until he was mapped on 21-2-2025. By then, the notice of withdrawal of the appeal was on record having been filed 2 months before. Thirdly, counsel could not have taken instructions on an appeal that was due for withdrawal. For the above reasons, I order that there will be no costs to the Respondents.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 3RD DAY OF JUNE, 2025.

M.N. GICHERU

JUDGE.

Delivered online in the presence of; -

Court Assistant – Mwangi Njonjo

Appellant's Counsel – Miss Muriranja

Respondent's Counsel – Mr. T.M. Njoroge

