



REPUBLIC OF KENYA



KENYA LAW
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**Lwangu v Ndote & 23 others (Environment & Land Case
79 of 2010) [2025] KEELC 4934 (KLR) (2 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 4934 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT & LAND CASE 79 OF 2010**

CK NZILI, J

JULY 2, 2025

BETWEEN

SOFIE FEIS CAROLINE LWANGU PLAINTIFF

AND

BENSON WAFULA NDOTE 1ST DEFENDANT

KENNEDY AMADI NDOTE 2ND DEFENDANT

SIMON KABOCHI KABUI 3RD DEFENDANT

PATRICK NYUKURI 4TH DEFENDANT

JOHN ACHOKI AKENGA 5TH DEFENDANT

RESELINE ASENWA 6TH DEFENDANT

ALICE KULUNDU NASIO 7TH DEFENDANT

PAUL SINGOMBE MACHWARA 8TH DEFENDANT

JOSEPHAT OBUNIA NYANGWESO 9TH DEFENDANT

JUSTUS BUNDI MAKORI 10TH DEFENDANT

BEATRICE MUSIMBI 11TH DEFENDANT

EDWARD MBALIZWA MUHALIA 12TH DEFENDANT

SIMON NJENGA MBUGUA 13TH DEFENDANT

ROBERT ONZOMU 14TH DEFENDANT

EVERLYNE K SIRIBA 15TH DEFENDANT

PERMINUS MIGIRO SIRIBA 16TH DEFENDANT

HENRY NYANGWESO 17TH DEFENDANT



EDWARD MBARIRA	18 TH DEFENDANT
TIRIAS CHAKAYA MUDAKI	19 TH DEFENDANT
JOHN NJENGA	20 TH DEFENDANT
FRANCIS MUDACHI	21 ST DEFENDANT
JOHN NYAKUNDI	22 ND DEFENDANT
ELIUD NJOMO	23 RD DEFENDANT
PROTAS KAMREI	24 TH DEFENDANT

RULING

1. Section 27 of the *Civil Procedure Act* provides that costs follow the event. The court may order otherwise depending on the circumstances of the case.
2. In *Rai & Others -vs- Rai* [2014] eKLR, the court said that a party who calls forth the event by instituting a suit will bear the costs if the suit fails but if the party shows legitimate occasion by a successful suit, the defendant or respondent will bear the costs.
3. The discretion to do so falls with the court. The judgment was delivered on 24/3/2025, the 1st, 2nd, 5th – 24th defendants have come informally to court stating that they were denied costs with no reasons thereof given in the judgment.
4. On the other hand, the 1st and 2nd defendants says that their counterclaim was allowed as prayed but the Deputy Registrar has declined to tax their bill of costs. The trial court had noted that the 1st, 2nd and 3rd defendants were relatives of the plaintiff.
5. Mr. Odhiambo, counsel for the plaintiff submits that there is no application for review and that a memorandum of appeal has been filed at the Court of Appeal, hence the court is functus officio.
6. Learned counsels for the defendants led by Ms. Munialo, Ms. Arunga and Mr. Kiarie advocates urge the court to rule on the issue of whether their clients are entitled to costs without the need for a formal application or lodging of an appeal. There is already a notice of appeal filed by the plaintiff. It is instructive that the 4th defendant did not file any defence to the case. The 5th - 24th defendants were purchasers for value of the suit land. The 3rd defendant's counterclaim was not allowed.
7. In *Supermarine Handling Services Ltd -vs- Kenya Revenue Authority Civil Appeal No. 85 of 2006*, the Court of Appeal held that costs of any action or other matter or issue shall follow the event, unless the court shall for good reasons, otherwise order. The court held that the discretion falls under the judge who tried the case and is exercised based on the facts and the question of sufficiency of those grounds, for this purpose is entirely a matter for the judge himself to decide, which discretion the Court of Appeal may not interfere with, unless there is evidence it was exercised unjustly or on wrong principles.
8. In *Rai & Others -vs- Rai & Others* (supra), the Supreme Court held that 'although there is eminent good reason on the basic rule on costs – that should follow the event – it is not an invariable rule and that the ultimate factor on award or non-award of costs is the judicial discretion. The relevant question in this matter must be whether or not the circumstances merit an award of costs to the applicant'.



9. In Halsbury's Laws of England 4th Edition [2010] Vol 10 par 16, it is stated that where costs are a discretion of the court, a party has no right to costs unless and until the court awards them to him and that the court has an absolute and unfettered discretion to award or not to award them.
10. The costs to the 1st and 2nd defendants whose counterclaim was allowed are not specifically mentioned as awarded to them in the body of the judgment. The 4th defendant had not filed a defence. The 3rd defendant's counterclaim was also not allowed. With regard to the 5th – 24th defendants, the court has not been told that the circumstances of the suit demanded that they must be awarded costs. The court has not been told that the discretion was exercised unjustly, or on the wrong principles.
11. In Morgan Air Cargo Limited -vs- Everest Enterprises Limited [2014] KEHC 8693 (KLR), the word "event" is defined as the result of all the proceedings to the litigation and may mean "events" of separate issue in an action and further, that the "express costs follow the event means that the party who on the whole succeeds in the action gets general costs of the action and where the actions involves separate issue, whether arising under different causes of action or under one cause of action, the costs of any particular issue go to the party who succeeds upon it.
12. In the suit before the court, there is evidence there was a counterclaim which was allowed in favour of the 1st and 2nd defendants, against the defendants in the counterclaim, who were the same parties in the primary suit lost against the other parties. The applicants are not saying that they were unjustifiably brought before the court. Since both lost, it would make no sense to award costs for they would cancel out. It was an even draw. There is already a pending appeal. The court finds no error on the face of the record to be corrected under Sections 99 and 100 of the Civil Procedure Act. Any aggrieved party to the judgment as delivered has a right of appeal.
13. Orders accordingly.

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 2ND DAY OF JULY 2025.

In the presence of:

Court Assistant – Dennis

Miss Munialo for 1st and 2nd defendant present

Miss Munialo holding brief for Kiarie for 3rd defendant present

4th defendant in person present

Miss Arunga for 5th - 24th defendants present

Odhiambo for plaintiff present

HON. C.K. NZILI

JUDGE, ELC KITALE.

