



Edpark Estate Management Limited & 38 others v Serem & another (Environment & Land Case E202 of 2021) [2024] KEELC 497 (KLR) (6 February 2024) (Ruling)

Neutral citation: [2024] KEELC 497 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E202 OF 2021
MD MWANGI, J
FEBRUARY 6, 2024**

BETWEEN

EDPARK ESTATE MANAGEMENT LIMITED & 38 OTHERS PLAINTIFF

AND

HENRY KIPKOGEI SEREM 1ST DEFENDANT

DIAMOND PROPERTY MERCHANTS 2ND DEFENDANT

RULING

1. On 24th October, 2023, the Advocate for the Plaintiffs Ms. Karwitha informed the Court that they had received a letter from the Ministry of Lands giving the proper position on the title to the suit property(s) herein. They had also been issued with official searches confirming that there were no caveats placed on the titles. Consequently, having established the proper position, they had no use of this suit anymore and therefore intended to withdraw it but with no orders as to costs.
2. Mr. Wandati, Advocate for the 1st Defendant indicated that though he had no objection to the intended withdrawal of the suit, he would insist on payments of costs. He stated that they had defended the suit so far, with numerous court attendances.
3. The Plaintiffs on their part pleaded that costs should not be granted since the Plaintiffs' action was prompted by letters from the Ministry of Lands which had alarmed them necessitating the filing of tis suit.
4. Since the parties could not agree on the issue of costs, the Court allowed the withdrawal of the Plaintiffs' suit but directed that the parties submit on the issue of costs for determination.



Submissions by the Parties

5. The Plaintiffs and the 1st Defendant complied with the Court's directions and filed their respective submissions. The Plaintiffs' submissions are dated 6th November, 2023 whereas the 1st Defendant's submissions are dated 28th November, 2023. The 2nd Defendant did not participate in the suit.

Analysis and determination

6. Both sides are in agreement on the discretion of the Court as regards costs. Both make reference to Section 27 of the [Civil Procedure Act](#) in that regard. Section 27 of the [Civil Procedure Act](#) provides that:

“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 give all the necessary directions for the purposes aforesaid; and the fact that the court has no jurisdiction to try the suit shall be no bar to 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 reasons otherwise direct.”

7. Again, both sides submitted in unison on the considerations, that the court should take into account while exercising the discretion under Section 27 of the [Civil Procedure Act](#).

8. The 1st Defendant referred to the case of [DMG -vs- EWG](#) [2021] eKLR, where the Court held that:

“While exercising its discretion as provided under Section 27, the court is among other issues called upon to look at the following factors:

- a. The subject of the suit;
- b. Circumstances that led to the institution of the suit;
- c. Events which constituted the termination;
- d. The stage at which they were terminated; and
- e. the relationship between the parties and the need for reconciliation amongst the parties.

9. The 1st Defendant also referred to the case of *Republic -vs- Rosemary Wairimu Munene, Exparte Applicant -vs- Ihururu Dairy Farmers Co-operative Society Ltd*, Judicial Review Application No. 6 of 2014, where the Court stated that:

“The issue of costs is the discretion of the Court as provided under the above section (Section 27 of the [Civil Procedure Act](#)). The basic rule on attribution of costs is that costs follow the event. It is well recognized that the principle costs follow the event is to be used for compensating the successful party for the trouble taken in prosecuting or defending the case.”



10. The ‘trouble taken in prosecuting or defending the suit’, as stated in the case of *Haraf Traders Ltd – versus- Narok County Government* [2023], eKLR, refers to:
- “... the various lawful and legitimate steps taken by the parties in the case in pursuit of remedy.”
11. The 1st Defendant’s argument is that putting into mind all the above considerations, it is entitled to costs for the trouble taken in defending the case.
12. On their part, the Plaintiffs argue that there are justifications for the court to depart from the general rule that costs follow the event. They referred to the Supreme Court decision in the case of *Jasbir Singh Rai & others -versus- Tarlochan Rai and others* [2014] eKLR, where the Court stated that:
- “In the Classic Common Law Style, the Courts have to proceed on a case by case basis, to identify good reasons for such a departure.”
13. The Plaintiffs highlighted some of the relevant considerations that the court should have in mind to include:
- i. the conduct of the parties,
 - ii. the subject of litigation,
 - iii. the circumstances which led to the institution of the proceedings,
 - iv. the events which eventually led to their termination,
 - v. the stage at which the proceedings were terminated,
 - vi. the manner in which they were terminated,
 - vii. the relationship between the parties,
 - viii. the need to promote reconciliation amongst the disputing parties pursuant to Article 159(2) (c) of the *Constitution*, and
 - ix. public interest.
14. In making its determination, this Court has carefully perused its record in respect to this case. The Court agrees with the submissions of the 1st Defendant that there have been numerous Court attendances prior to the withdrawal of this suit.
15. Again, from the record, the Plaintiffs had filed a Notice of Motion application dated 2nd June, 2021, amended on 10th February, 2022 which the Court, after due consideration, dismissed with costs to the 1st Defendant. So, the court had already awarded the 1st Defendant costs of the application.
16. Considering the peculiar circumstances of this case, the Court is persuaded that the 1st Defendant is entitled to costs for the trouble of defending this suit. However, having in mind the stage at which the suit was terminated, the court will award the 1st Defendant what it considers reasonable costs, a total of Kshs 120,000/= which will be inclusive of the costs for the dismissal of the Plaintiff’s application awarded on 12th July, 2022.

It is so ordered.



RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 6TH DAY OF FEBRUARY, 2024.

M.D. MWANGI

JUDGE

In the virtual presence of:

Ms. Nyakowa h/b for Mr. Wandati for the 1st Defendant

N/A for the Plaintiff and the 2nd Defendant

M.D. MWANGI

JUDGE

