



Ethaga Anjiru Company Limited v Githendu (Sued as Officials of and on Behalf of Chui Self Help Group) & another (Civil Suit 530 of 2012) [2024] KEELC 321 (KLR) (1 February 2024) (Ruling)

Neutral citation: [2024] KEELC 321 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
CIVIL SUIT 530 OF 2012**

JA MOGENI, J

FEBRUARY 1, 2024

(BY ORIGINAL ACTION)

1. JULIUS KARIUKI GITHENDU

2. LYDIA WAMBUI

3. ALICE WANJIRU NGURE (ALL SUING AS OFFICIALS

AND ON BEHALF OF CHUI SELF HELP GROUP..... PLAINTIFF

VERSUS

ETHAGA ANJIRU COMPANY LIMITED..... 1ST DEFENDANT

ESTON MUCHERU MWANGI..... 2ND DEFENDANT

KAMAU MAGU..... 3RD DEFENDANT

JULIUS P. KIRURI MACHARIA..... 4TH DEFENDANT

BETWEEN

ETHAGA ANJIRU COMPANY LIMITED PLAINTIFF

AND

JULIUS KARIUKI GITHENDU (SUED AS OFFICIALS OF AND ON BEHALF OF CHUI SELF HELP GROUP) 1ST DEFENDANT

NAIROBI CITY COUNCIL 2ND DEFENDANT

RULING

1. The parties herein went for court annexed mediation and entered into a partial settlement regarding the main issue of the suit property but were not able to agree concerning costs. The court directed the parties to negotiate with each other to reach an amicable settlement on costs but they were not able



to agree. The settlement reached by the parties has been adopted as the order of this court and that essentially settled the dispute in the suit herein save for the issue of costs. The parties agreed in the said consent to file submissions on the issue of costs that would form the basis of the court's decision on the award of costs.

2. The plaintiff who instituted this suit filed their submissions dated 6/12/2023 and explained the genesis of the suit. It was their submission that the leadership wrangles that saw the parties drag each other to court. They admit that the case was terminated midway before the plaintiff closed its case after a successful court annexed mediation. The termination was done mutually.
3. They submitted that the members in the suit are all members of Chui Self Help Group of 1986. The plaintiff urged the court in the spirit of reconciliation to consider that the parties are all winners because they agreed to bury their hatchet and go back to their founding principle that saw them invest in the suit property as a way of improving their lives. The plaintiff referred the court to the case of *Party of Independent Candidate of Kenya & Another vs Mutula Kilonzo & 2 Others* (2013) eKLR. Which espoused two principles about award of costs. One being that this is a discretion of the judicial officer and second that the winning party is always awarded the costs except in very special circumstances.
4. On their part, the 1st defendant's and Plaintiffs' counsel (in the counter claim) filed submissions dated 26/01/2024 wherein she gave a background to the suit herein and explained that the 1st Defendant having been taken through the trouble to defend the suit for over 10 years should be compensated for the trouble they went through by way of costs.
5. The 1st defendant's and Plaintiffs' counsel (in the counterclaim) submitted that costs shall follow the event and relied on the definition of event in as provided in the text *Judicial Hints on Civil Procedure*, 2nd Edition by Justice Kuloba (as he then was), to mean the result of all the proceedings incidental to the litigation. Further, that while discretion remain with the Honorable Court or Judge as provided under Section 27 of the *Civil Procedure Code*, the case of *DGM vs EWG* [2021] eKLR can assist the court. It was the Counsel's submission that the 1st defendant has been faithfully paying land rates to the City Council of Nairobi with regard to the suit property. That the 1st defendants are not guilty of any misconduct, and hence are entitled to costs of the suit as a matter of course.
6. At this moment I feel like the biblical King Solomon having a child in their hand and seeking to determine who the actual mother is. I do find that the matter before me was genuinely founded and the same was not frivolous or vexatious. The termination of the dispute midway before closure of the plaintiff's suit was attributable to the commitment and engagement of both parties to seek and amicable solution given that the parties were all members of the 1st defendant. In the circumstances, it only just and fair in line with Article 159 (2) of the *Constitution* that parties do bear their own costs of the proceedings.
7. Since each party contributed, by their conduct to the filing of this suit, I order that each party shall bear its cost. The File is now closed.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 1ST OF FEBRUARY 2024.

.....

MOGENI J

JUDGE



In the virtual presence of;-

Ms. Njoroge holding brief for Mr.Kamau

Ms. Karita holding brief for Mr.Kihara for the 1st Defendant

No appearance for the 2nd Defendant (Did not participate)

Ms. Caroline Sagina: Court Assistant

