



**Karisa & 10 others (Suing through the Estate of Charo Karisa who died Interstate) v Rimba
(Environment & Land Case E002 of 2023) [2024] KEELC 3281 (KLR) (4 April 2024) (Ruling)**

Neutral citation: [2024] KEELC 3281 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE E002 OF 2023**

LL NAIKUNI, J

APRIL 4, 2024

BETWEEN

**MICHAEL CHARO KARISA 1ST PLAINTIFF
NYEVU CHARO KARISA 2ND PLAINTIFF
BOSCO SAFARI CHARO 3RD PLAINTIFF
SAMMY CHARO KARISA 4TH PLAINTIFF
ESTHER KADZO CHARO 5TH PLAINTIFF
JAPHET MAITHA CHARO 6TH PLAINTIFF
PHILISTER KACHE CHARO 7TH PLAINTIFF
JUMA KOMBO CHARO 8TH PLAINTIFF
SHEBANI CHARO KARISA 9TH PLAINTIFF
VINCENT MRAMBA CHARO 10TH PLAINTIFF
REHEMA KAZUNGU BAYA 11TH PLAINTIFF
SUING THROUGH THE ESTATE OF CHARO KARISA WHO DIED
INTERSTATE**

AND

CHARO KUCHU RIMBA DEFENDANT



RULING

I. Introduction

1. The Honorable Court was called upon to make its determination over the Notice of Motion application dated 6th December, 2023. The application was by Michael Charo Karisa & 10 others, the Plaintiffs/Applicants herein, under the provision of Order 40 Rule 3 of the Civil Procedure Rules, 2010 and Sections 1A, 1B, 3A and 63(c) and (e) of the Civil Procedure Act, Cap 21 of the Laws of Kenya.
2. Upon service of the application to the Defendant/Respondent responded to the Notice of Motion application through a Replying Affidavit dated 6th March, 2024. The Honourable Court will deal with the issues in details.

II. The Plaintiffs/Applicants' case

3. The Plaintiffs/Applicant sought for the following orders:-
 - a. Spent.
 - b. That the Honourable court be pleased to issue a warrant of arrest of CHARO RUCHU RIMBA for disobeying Court Order made on the 31st October, 2023 which provides that status quo of the suit property be maintained. Meaning the situation to remain as it was before the filing of the suit, no subdivision, selling, wasting and/or alienation or dealing with the land in whichever way until hearing of case.
 - c. That upon the arrest of the above named Defendant/Respondent and their presentation to Court, the Defendant/Respondent should Show Cause why they should not be committed to Civil jail for a period of Six (6) Months for disobeying the said Court Order for maintenance of status quo made on the 31st October, 2023
 - d. That in the alternative to prayer 3 above the court imposes a fine on the Defendant/ Respondent and or any other punishment permitted under the law.
 - e. That the cost of the application be provided for.
4. The application by the Plaintiffs/Applicants herein was premised on the grounds, testimonial facts and averments made out under the 8th Paragraphed Supporting Affidavit of –MICHAEL CHARO KARISA, the 1st Plaintiff/ Applicant herein sworn and dated 6th December, 2023. The Deponent averred that:
 - a. On the 31st October,2023 when the application dated 24th July, 2023, 17th August 2023 and 25th September, 2023 came up for ‘inter parties’ hearing the same were compromised to pave way to the hearing of the main suit to 22nd May, 2024 and the Honourable court presided over by Hon. Justice L.L Naikuni who in order to preserve the suit property in the meantime directed that the status quo of the suit property be maintained.
 - b. The Defendant/Respondent was in blatant disregard of the said Court Order of maintaining the status quo by continuing to carry on quarrying activities and removal of sand on the suit property hence this Honourable court’s respect had been lowered and rendered useless.
 - c. The status quo Orders were made pursuant to the Provision of Orders 40 Rule 2 of the Civil Procedure Rules, 2010 by a competent Court vested with the Jurisdiction and conduct of the



suit herein hence any party who disobeyed Court Orders made under the provision of Order 40 Rule 2 of the Civil Procedure Rules, 2010 was liable for punishment under the Provisions of Order 40 Rule 3 of the Civil Procedure Rules, 2010 which provided for the attachment of the contemtor's property or Committal to Civil jail for a term not exceeding Six (6) months or a fine as per the discretion of the Court.

- d. The Defendant/Respondent's actions was out to defeat Justice and render the suit herein nugatory. Continuous breach of Court Order would result to irreparably loss and damage of the Plaintiffs/Applicants.
- e. This Honourable Court had powers conferred to it under the provision of Order 40 Rule 3 of the Civil Procedure Rules, 2010 to punish the Defendant/Respondent.
- f. It was therefore fair and just that the application herein be allowed and the Orders sought be granted.

III. The response by the Defendant/Respondent

5. There was a response to the Notice of Motion application dated 6th November, 2023, by Charo Ruchu Rimba, the Defendant/Respondent herein through a 12th paragraphed Replying Affidavit sworn on 6th March, 2024. The Deponent averred that:-
 - a. The Honourable Court mentioned the Plaintiffs/Applicants applications for inter parties hearing on the 31st October, 2023 whereby all the Plaintiffs/Applicants applications were compromised to pave way for full hearing of the main suit which has been even slated for hearing on 22nd May, 2024.
 - b. It was not in dispute that, the Honourable court ordered during the inter-parties hearing of the Plaintiffs/Applicants applications that status quo to be maintained in order to preserve the suit property. However the allegation by the Plaintiffs/Applicants, that the Defendant/Respondent had contravened the orders of the said court was not true. It was farfetched and only a ploy to mislead the Honourable Court by making it to believe that, the Defendant/Respondent was not law abiding citizen knowing very well that the Defendant/Respondent was not the one carrying on with the mentioned activities.
 - c. The Plaintiffs/Applicants' late father bought from himself piece of land approximately measuring two and half (2 ½) Acres. The rest who were in occupancy too bought different sizes from himself and absolutely no one had come back to him claiming more acreage. Therefore, the Plaintiffs/Applicants should justify their claim and or prove their case beyond reasonable doubt.
 - d. The Plaintiff/Applicants were playing cat and mouse game with this Honourable court trying to make good of their threat that, they MUST make sure that they deprive him of his piece of land which shares boundaries with their piece he sold to their late father one Mzee CHARO KARISA who lived in the said land for a period of 13 years before his demise and never interfered with the boundaries and/or claiming more piece from him.
 - e. He had not been having any activity on his piece of land. He never understood why the Plaintiffs/Applicants had brought in this application at all. He was aware that sand harvesting was happening in other parcels of land in the vicinity but not in his land nor the Plaintiffs/Applicants piece of land and for this reason he could categorically state here that he had not and shall not interfere with the others made piece of land in mind within the same vicinity which obviously never belonged to him.



- f. The Plaintiffs/Applicants application dated 6th December, 2023 was therefore what belonged to him and what belonged to the Plaintiffs/Applicants late father. The Plaintiffs/Applicants should point out which parcel of land they were talking about, because as far as he was concerned, there was no activity taking place on his piece of land.
- g. The application was therefore not clear and it never showed how the Defendant/Respondent had interfered with the orders of this Honourable Court. It was apparent that the Plaintiffs/Applicants were in a wild goose chase trying to obtain very and/or any orders of this Honourable Court.
- h. The Plaintiffs had failed to demonstrate that the sand harvesting was actually taking place in his parcel of land and for that reason, the application was misconceived and should be dismissed with costs to the Defendant/Respondent.
- i. Therefore, he prayed to this Honourable Court that the Plaintiffs/Applicants be estopped permanently from interfering and/or intimidating him and leave his family to have quiet and peaceful enjoyment. It was his prayer that, the Honourable Court should hear this case to its logical conclusion and to ascertain the facts surrounding this matter.

IV. Submissions

- 6. On 21st February, 2024 while all the parties were present in Court, they were directed to have the Notice of Motion application dated 6th December, 2023 be disposed of by way of written submissions and all the parties complied.
- 7. Pursuant to that, and by the time of penning down this Ruling, only the Plaintiffs/Applicants had obliged. Thus, a ruling date was reserved on 4th April, 2024 by the Honourable Court on merit accordingly.

A. The Written Submissions by the Plaintiffs/Applicants

- 8. The Learned Counsels for the Plaintiffs/Applicants the Law firm of A. N Attancha & Company Advocates filed their brief written submissions dated 21st March, 2024. Mr. Attancha Advocate commenced his submissions by informing Court that the Plaintiffs/Applicants filed the application dated 6th December, 2023 seeking to have the Defendant/Respondent cited for contempt of Court order made on 31st October, 2023. That they sought to have the Defendant/ Respondent punished by imprisonment as provided for in Law. The Learned Counsel underscored the fact that the application was opposed.
- 9. According to the Learned Counsel, the Defendant/Respondent was in constant removal and harvesting of sand from the subject premises. In so doing, he was in acting in contempt of the Court orders requiring for the status quo to be maintained. To the Counsel, the Defendant/Respondent never denied expressly not being in contempt of Court orders. He had been aware of the said orders as both of them with his Advocates were present in Court when the orders were made.
- 10. The Learned Counsel averred that the Defendant/Respondent under the averments of Paragraph 7 of the Replying Affidavit stated that indeed there were sand harvesting taking place within the vicinity but a different parcel of land away from the suit land. To the Learned Counsel this were gimmicks to hoodwink and divert the attention of the Court. To buttress his argument, the Learned Counsel cited a decision by this very Court of: “ELC (Mombasa) No. 177 of 2021 – The Honorable Attorney General (Suing on behalf of the Ministry of Education to defend Public property of Mrima Secondary school)



– Versus – Paul Abel Macharia” whereby in that persuasive decision the Court found the Defendant was in contempt of Court and the Court proceeded to punish the Defendant by imprisonment.

11. In conclusion, the Learned Counsel urged Court to allow the application and grant the prayers sought.

V. Analysis & Determination.

12. I have carefully read and considered the pleadings herein by the Plaintiffs/Applicants, the Replying Affidavit by the Defendant/ Respondent, the myriad of cases cited herein by parties, the relevant provisions of *the Constitution* of Kenya, 2010 and statutes.

13. In order to arrive at an informed, just, equitable and reasonable decision, the Honorable Court has two (2) framed issues for its determination. These are:-

- a. Whether Charo Ruchu Rimba, the Defendant/ Respondent was in contempt of Court orders issued on 31st October, 2023 as provided for by Order 40 Rule 3 of the Civil Procedure Rules 2010 and should be committed to civil jail for a period of six months?
- b. Who will bear the Costs of Notice of Motion application dated 6th December, 2023.

Issue No. a). Whether Charo Ruchu Rimba, the Defendant/ Respondent was in contempt of Court orders issued on 31st October, 2023 as provided for by Order 40 Rule 3 of the Civil Procedure Rules 2010 and should be committed to civil jail for a period of six months

14. The Honourable Court has deciphered that the main Substratum in this proceedings herein is one on Contempt of Court from an alleged breach and gross violation of the Court orders. It has been stated on umpteenth times that Court orders are sacrosanct. They are not a formality nor cosmetic. They have to be obeyed however erroneous they maybe. The only remedy available is for an aggrieved party to revert back to Court seeking for either review or variation or setting aside or discharge of the said orders depending on the prevailing circumstance and surrounding facts and inferences. The consequences of disobedience of Court order is extremely serious as it borders on criminality capable of one forfeiting their fundamental rights and freedoms enshrined in the Bill of Rights under *the Constitution*.

15. The provision of Order 40 Rule 3 of the Civil Procedure Rules, 2010 on the consequence of breach of injunctive orders provides as follows:-

- “(1) In cases of disobedience, or of breach of any such terms, the court granting an injunction may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in prison for a term not exceeding six months unless in the meantime the court directs his release.
- (2) No attachment under this rule shall remain in force for more than one year, at the end of which time, if the disobedience or breach continues, the property attached may be sold, and out of the proceeds the court may award such compensation as it thinks fit, and shall pay the balance, if any, to the party entitled thereto.
- (3) An application under this rule shall be made by notice of motion in the same suit.



16. The Black's Law Dictionary 11th Edition, defines contempt as:-

“The act or state of despising; the quality, state or condition of being despised. Conduct that defies the authority or dignity of a court or legislature. Because such conduct interferes with the administration of justice, it punishable by fine or imprisonment”.

17. At some initial point, the legal framework that governed contempt of court was the [Contempt of Court Act](#) until it's nullification in the case of:- “Kenya Human Rights Commission – Versus - Attorney General & another [2018] eKLR Constitutional Petition No. 87 of 2017”.

18. However, the court in the case of:- “Samuel M. N. Mweru & Others – Versus - National Land Commission & 2 others [2020] eKLR” while discussing the legal framework on contempt of court stated as follows:-

“The applicable law as regards contempt of court existing before the enactment of the [Contempt of Court Act](#) was restated by the Court of Appeal in Christine Wangari Gachege – Versus - Elizabeth Wanjiru Evans & 11 Others, [2014] eKLR. In that case the Court found that the English law on committal for contempt of court under Rule 81.4 of the English Civil Procedure Rules, which deals with breach of Judgment, order or undertakings, was applied by virtue of Section 5 (1) of the [Judicature Act](#) which provided that:

“The High Court and the Court of Appeal shall have the same power to punish for contempt of court as is for the time being possessed by the High Court of Justice in England, and that power shall extend to upholding the authority and dignity of subordinate courts.”

This section was repealed by Section 38 of the [Contempt of Court Act](#) of 2016, and as the said Act has since been declared invalid, the consequential effect in law is that it had no legal effect on, and therefore did not repeal Section 5 of the [Judicature Act](#), which therefore continues to apply. In addition, the substance of the common law is still applicable under Section 3 of the [Judicature Act](#). This Court is in this regard guided by the applicable English Law which is Part 81 of the English Civil Procedure Rules of 1998 as variously amended, and the requirement for personal service of court orders in contempt of Court proceedings is found in Rule 81.8 of the English Civil Procedure Rules.”

19. As restated in the above case law, the law then applicable in contempt of court proceedings is Section 5(1) of the [Judicature Act](#), Cap. 8 which mandates that the court relies on the applicable law in England at the time the alleged contempt is committed. In the case of “Samuel M. N. Mweru (Supra) the Court dealing with an application for contempt of court based on disobeyed of a court order stated:

“An application under Rule 81.4 “(breach of judgement, order or undertaking) now referred to as “application notice” (as opposed to a notice of motion) is the relevant one for making the application now under consideration. The application notice must set out fully the grounds on which the committal application is made and must identify separately and numerically, each alleged act of contempt and be supported by affidavit(s) containing all the evidence relied upon”.

20. I reiterate that a claim on contempt of court is a grave issue that the court treats with a lot of seriousness as it goes to the core of undermining the authority of the court. It is a fundamental principle of law



that court orders are meant to be obeyed to the letter as they are not issued in vain. Failure to obey court orders would then result in contempt of court.

21. The importance of obedience of court orders was restated in the case of “Econet Wireless Kenya Limited – Versus- Minister for Information & Communication of Kenya & another [2005] eKLR” where the court cited with approval the case of “Gulabchand Popatlal Shah & Another Civil Application No. 39 of 1990”, (unreported). The Court of Appeal held, inter alia,

“..... It is essential for the maintenance of the Rule of Law and good order that the authority and dignity of our courts are upheld at all times. This court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors”

22. Fundamentally, courts need to ascertain whether the applicant herein has met the basic elements set out to prove a case for contempt of court. In the case of “Katsuri Limited – Versus - Kapurchand Debar Shah [2016] eKLR” as relied upon by the Respondents, the court stated that:

“The applicant must prove to the required standard (in civil contempt cases which is higher than in criminal cases) that:-

- (a) the terms of the order (or injunction or undertaking) were clear and unambiguous and were binding on the defendant;
- (b) the defendant had knowledge of or proper notice of the terms of the order;
- (c) the defendant has acted in breach of the terms of the order; and
- (d) the defendant's conduct was deliberate.”

23. I will therefore be analyzing each element as set out above and in close application to the instant case. In so doing I will be looking at the court order issued by the court. The provision of Section 29 of the Environment and Land Court is clear to the effect that:-

“Any person who refuses, fails or neglects to obey an order or direction of the Court given under this Act, commits an offence, and shall, on conviction, be liable to a fine not exceeding twenty million shillings or to imprisonment for a term not exceeding two years, or to both

24. It is an established principle of law as was held in the case of “Kristen Carla Burchell – Versus - Barry Grant Burchell, Eastern Cape Division Case No. 364 of 2005” in order to succeed in civil contempt proceedings, an Applicant has to prove (i) the terms of the order, (ii) Knowledge of these terms by the Respondents, (iii). Failure by the Respondent to comply with the terms of the order.

25. From the sworn affidavits, annexure's, submissions by the respective parties' Counsels on record, the applicable law and the decided cases, the following issues stand out for determination:-

- i. Whether there was a valid Court order issued by this Court on the 31st October, 2023 by this Honourable Court
- ii. Whether the Respondents herein were served with or was aware of the orders made on 31st October, 2023.
- iii. Whether the order as sought and extracted was clear and unambiguous
- iv. Whether the Respondent is guilty of contempt of Court order herein issued.



26. In the instant case, from the very onset and without mincing words, the Honourable Court outrightly states that it is not at all persuaded that there is any Contempt of Court committed by the Defendants/ Respondents as alleged by the Applicants for the following reasons:- Firstly, I hold that it is clear that the order issued by the court was clear and unambiguous. It was addressed to the Defendants/ Respondents, hence binding upon them. The Plaintiffs/Applicants' case is that an order was made on the 31st October, 2023 by this Honourable Court where it opined itself as follows:-

“By consent of the Counsel, I direct that:-

1. That the notice of motion applications dated 17th August, 2023, 24th July, 2023 and 25th September, 2023 be and are hereby compromised for purposes of paving way to the hearing of the main suit.
2. That all the parties are granted 21 days leave to comply with Order 11 of the Civil Procedure Rules, 2010.
3. That any party wishing to be joined in the suit under order 1 Rule 10(2) and (4) of the Civil Procedure Rules, 2010 to move Court for that purpose and the Plaintiff will amend the Plaint.
4. That there be orders of STATUS QUO to be maintained meaning the situation to remain as it was before the filing of the suit – no substituting, selling or dealing with the land in whichever way pending the hearing and determination of the case.
5. That the matter to be heard on 22nd May, 2024 and there be a mention on 21st February, 2024 for compliance on the trial conference under Order 11 of the Civil Procedure Rules, 2010.”

27. Secondly, on the alleged contemnor ought to have knowledge of or proper notice of the terms of the order. The Defendant/Respondent had representation by his Advocate in court on 31st October, 2023 therefore he was aware of the said orders.

28. Thirdly, the allegations blatantly meted out by the Plaintiff/Applicant to the effect that the Defendant/ Respondent had willfully disobeyed these orders and even went ahead to vandalize the suit property after the Honourable Court gave its orders on 31st October, 2023 have not been proved whatsoever. Further, that accusation that the Defendant/Respondent by causing quarrying activities on the suit land willfully acted in contempt by not obeying this Court orders as this Honorable Court had made clear orders in terms of handling of the suit property remain as mere unproved assertions. The Plaintiffs/Applicant was never specific which particular land the alleged activities were taking place. It was a vague, general and wide allegation. Additionally, the Honourable Court fully concurs with the aversions made by the Defendant/Respondent through their Replying Affidavit sworn on 6th March, 2024 to the effect.

29. Fourthly, the Court fully concurs with the aversions rightfully made out on the proper legal position by the Defendant/Respondent to wit that:-

- a. The Honourable court mentioned the Plaintiffs/Applicants applications for inter parties hearing on the 31st October, 2023 whereby all the Plaintiffs/Applicants applications were compromised to pave way for full hearing of the main suit which had been even slated for hearing on 22nd May, 2024.



- b. It was not in dispute that, the Honourable court ordered during the “inter-parties” hearing of the Plaintiffs/Applicants applications that, status quo to be maintained. However the allegation by the Plaintiffs/Applicants, that, the Defendant/Respondent had contravened the orders of the said court was not true, it’s farfetched and only a ploy to mislead the Honourable court by making the Honourable court to believe that, the Defendant/Respondent was not law abiding citizen knowing very well that the Defendant/Respondent was not the one carrying on with the mentioned activities.
 - c. The Plaintiffs/Applicants’ late father bought from myself piece of land approximately measuring two and half (2 ½)Acres and the rest who are in occupancy too bought different sizes from myself and absolutely no one has come back to him claiming more acreage. Therefore, the Plaintiffs/Applicants should justify their claim and or prove their case beyond reasonable doubt.
 - d. The Plaintiff/ Applicants were playing cat and mouse game with this Honourable court trying to make good of their threat that, they MUST make sure that they deprive him of his piece of land which shares boundaries with their piece he sold to their late father one Mzee CHARO KARISA who lived in the said land for a period of 13 years before his demise and did not interfere with the boundaries and or claiming more piece from him.
 - e. He had not having any activity on his piece of land and he never understood why the Plaintiffs/Applicants had brought in this application at all. He was aware that sand harvesting was happening in other parcels of land in the vicinity but not in his land nor the Plaintiffs/Applicants piece of land and for this reason he can categorically state here that he had not and shall not interfere with the others made piece of land in mind within the same vicinity which obviously did not belong to him.
 - f. The Plaintiffs/ Applicants application dated 6th December, 2023 was therefore what belonged to the Deponent and what belonged to the Plaintiffs/Applicants late father. The Plaintiffs/Applicants should point out which parcel of land they were talking about, because as far as he was concerned, there is no activity taking place on his piece of land.
 - g. The application was therefore not clear and it never showed how the Defendant/Respondent had interfered with the orders of this Honourable Court. It was apparent that the Plaintiffs/Applicants were in a wild goose chase trying very any orders of this Honourable Court and do not intend to do so.
 - h. The Plaintiffs had failed to demonstrate that the sand harvesting was actually taking place in his parcel of land and for that reason, the application was misconceived and should be dismissed with costs to the Defendant.
30. To this end, therefore, where the allegation is based on generalities and failing to demonstrate that the actual sand harvesting was being done by the Defendant/Respondent and on the suit land through empirical and documentary evidence such as photographs and copies of other land documents such as title deed, ground report or investigation reports and so forth the Honourable Court is not satisfied that the Plaintiffs/Applicants have proved its case for contempt of Court orders by this Honourable Court given on 31st October, 2023 against the Defendant/Respondents.



31. In arriving at this conclusion, the Court is guided by the legal ratio found in the now famous case of the Court of Appeal in “Shimmers Plaza Limited – Versus - National Bank of Kenya Limited [2015] eKLR” emphasized that:-

“It is important however, that the Court satisfies itself beyond any shadow of a doubt that the person alleged to be in contempt committed the act complained of with full knowledge or notice of the existence of the order of the Court forbidding it. The threshold is quite high as it involves possible deprivation of a person’s liberty.”

32. As stated above, contempt proceedings are of a criminal nature and involve, if proved, loss of liberty. The Applicants must therefore endeavor to prove all facts relied on by way of evidence beyond reasonable doubt. In the end, it is the finding of this Honourable Court that the Plaintiffs/Applicants have not proved to the required standard that the Defendant/Respondent as cited were in brazen disobedience of the Court orders issued by this Honourable Court on 31st October, 2023. For these reasons, the application by the Plaintiffs/Applicants must fail.

Issue No. b). Who will bear the Costs of Notice of Motion application dated 6th December, 2023.

33. It is now well established that the issue of Costs are at the discretion of the Court. The Black Law Dictionary defines cost to means:-

“the expenses of litigation, prosecution or other legal transaction especially those allowed in favour of one party against the other”

34. In other words, Costs mean the award a party is awarded at the conclusion of a legal action or proceedings in any litigation. The provision of Section 27 of the Civil Procedure Act, Cap. 21 grants the High Court discretionary power in the award of costs which ordinarily follow the event unless the Court for good reasons orders otherwise. Section 27 (1) provides as follows:-

“(1) 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 to give all necessary directions for the purposes aforesaid; and the fact that 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 or issue shall follow the event unless the court or judge shall for good reason otherwise order.”

35. A careful reading of the provision of Section 27 indicates that it is considered trite law that costs follow the cause/event, as described by Sir Dinshah Fardunji Mulla in his book *The Code of Civil Procedure*, 18th Edition, 2011 reprint 2012 at 540, is that costs must follow the event unless the court, for some good reasons, orders otherwise.

36. Additionally, the provision provides for ‘costs of and incidental to all suit or application’ which expression includes not only costs of suit but also costs of application in suit as described by Mulla (supra) at 536. Furthermore, Rtd. Justice Richard Kuloba in his book *Judicial Hints on Civil Procedure*, 2nd Edition, 2005 at 95 notes that the words ‘the event’ means the result of all the proceedings incidental to the litigation. Accordingly, the event means the result of the entire litigation. The order as to costs as provided for under section 27 remains at the discretion of the court.



37. The award of costs is therefore not cast in stone but courts have ultimate discretion. In exercising this discretion, courts must not only look at the outcome of the suit but also the circumstances of each case. In “Morgan Air Cargo Limited – Versus - Everest Enterprises Limited [2014] eKLR” the court noted that;

“The exercise of the discretion, however, depends on the circumstances of each case. Therefore, the law in designing the legal phrase that “Cost follow the event” was driven by the fact that there could be no “one-size-fit-all” situation on the matter. That is why section 27(1) of the *Civil Procedure Act* is couched the way it appears in the statute; and even all literally works and judicial decisions on costs have recognized this fact and were guided by and decided on the facts of the case respectively. Needless to state, circumstances differ from case to case.”

38. In this case, as this Honourable Court has opined above, the Applicants have not convinced the Court that the Respondent was in contempt of Court orders issued by this Honourable Court on 31st October, 2023. Therefore the costs of the application are awarded to the Defendant/ Respondent for having participated in the hearing and determination of this application.

VI. Conclusion & Disposition

39. In long analysis, the Honorable Court has carefully considered and weighed the conflicting parties’ interest as regards to balance of convenience. Ultimately in view of the foregoing detailed and expansive analysis to the rather omnibus application, this court arrives at the following decision and makes below order:-

- a. That the Notice of Motion application dated 6th December, 2023 by the Applicants be and is hereby found to lack merited and hence dismissed in its entirety.
- b. That this Honourable Court hereby does not find the Defendant/ Respondent namely, Charo Kuchu Rimba being in contempt of Court Orders given on 31st October, 2023 as the Applicants have not proved to this Honourable Court that the orders were flaunted.
- c. That costs of the Notice of Motion application dated 6th December, 2023 to be paid by the Plaintiffs/Applicants to the Defendant/Respondent.

It is so ordered accordingly.

RULING DELIEVERED THROUGH MICROSOFT TEAM VIRTUAL, SIGNED AND DATED AT MOMBASA THIS 4TH DAY OF APRIL 2024.

**HON. JUSTICE L. L. NAIKUNI,
ENVIRONMENT AND LAND COURT AT
MOMBASA**

Ruling delivered in the presence of:

- a. M/s. Firdaus Mbula, the Court Assistant.
- b. Mr. Attancha Advocate for the Plaintiffs/Applicants.
- c. M/s. Agoti Advocate for the Defendant/ Respondent

