



Kabeho Housing Co Ltd v Mbugua & 2 others (Environment and Land Appeal 6 of 2018) [2023] KEELC 20647 (KLR) (12 October 2023) (Ruling)

Neutral citation: [2023] KEELC 20647 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND APPEAL 6 OF 2018
FM NJOROGE, J
OCTOBER 12, 2023**

BETWEEN

KABEHO HOUSING CO LTD APPELLANT

AND

GEORGE GITAU MBUGUA 1ST RESPONDENT

SLMH MUHIA T/A SLMH MUHIA & CO ADVOCATE 2ND RESPONDENT

**DAVID NJAU WAKIO T/A MILANO COMMERCIAL AGENCIES 3RD
RESPONDENT**

RULING

1. This is a ruling on costs of a withdrawn appeal. On June 20, 2023 Mr Karanja for the appellant withdrew the appeal as against the 2nd and 3rd respondents. Reason given was that the 1st defendant in the lower court case had a counterclaim and a third party notice for indemnity.
2. The appellant was the 1st defendant in the lower court case. The appellant had a further amended defence and counterclaim to which he put no heading identifying the parties to the counterclaim and this kind of pleading becomes perplexing when such an issue of costs, as being dealt with here, occurs for it requires one to traverse further into the pleadings to establish the claim against each party and construe it properly.
3. The judgment by the lower court was that he had not proved his counterclaim. The counterclaim was dismissed with costs to the plaintiff and the first Third Party.
4. The first Third Party emerged victorious in the matter in the court below and was joined in this appeal as the 2nd respondent. No costs were awarded to the 2nd third party who was joined in the present appeal as the 3rd respondent.



5. Being guided by the lower court's decision on costs, I hereby award only the 2nd respondent the costs of the withdrawn appeal. The 3rd respondent will bear its own costs of the withdrawn appeal.
6. As this matter had been reserved for a ruling on the issue of costs only this file record is now to be returned to its original station, Nakuru for mention inter partes by the court and for further directions by the court there as to the disposal of the appeal.

DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 12TH DAY OF OCTOBER, 2023.

MWANGI NJOROGE

JUDGE, ELC, MALINDI

