



**Seka & others v Church of God in East Africa (Kenya) (Civil Appeal E132 of 2022) [2025] KEHC 169 (KLR) (14 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 169 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
CIVIL APPEAL E132 OF 2022  
HM NYAGA, J  
JANUARY 14, 2025**

**BETWEEN**

**ELIJAH SEKA & OTHERS ..... APPELLANT**

**AND**

**CHURCH OF GOD IN EAST AFRICA (KENYA) ..... RESPONDENT**

**RULING**

1. The matter herein commenced in the Lower court, where the appellants herein were sued by the Respondent. The Respondent had sought a permanent injunction against the Appellants, restraining them from interfering with the affairs of the church herein. Judgement was entered in favour of the Respondent and subsequently, they moved to evict the Appellants from the church's premises.
2. In my Ruling delivered on 7<sup>th</sup> February, 2024, I found that the purported eviction could not be effected as no such order had been prayed for in the suit.
3. Subsequently, after pondering over the matter, the Respondents opted not to oppose the Appeal, but urged the court not to award costs to the Appellants.
4. The Appellants in their part sought to have the costs of the Appeal.
5. The Appeal was allowed and parties were asked to submit on costs. They did so and I will not rehash their arguments word for word. It suffices to state that I have considered the submissions and I shall when necessary refer to them.



## Analysis and Determination

6. As has been correctly submitted, costs are at the discretion of the court by virtue of the provisions of section 27 of the Civil Procedure Act which states 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.

2. The court or judge may give interest on costs at any rate not exceeding fourteen per cent per annum, and such interest shall be added to the costs and shall be recoverable as such.”

7. There are a myriad of authorities addressing the question of whether a successful party should be awarded costs or not.

8. In *Cecilia Karuru Ngayu vs Barclays Bank of Kenya and Another* (2016) eKLR, cited by the Respondent, the court cited the factors to be considered when determining the question of costs. The court held that:-

“To my mind, in determining the issue of costs, the court is entitled to look at inter alia

- (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 and
- (viii) the need to promote reconciliation amongst the disputing parties pursuant to Article 159 (2) (c) of the Constitution.

In other words the court may not only consider the conduct of the party in the actual litigation, but the matters which led to the litigation, the eventual termination thereof and the likely consequences of the order for costs.”



9. The Appellants argue that there are no good reasons to justify a departure from the general rule that costs follow the events and urged the court to adopt the sentiments expressed by the court in *Haraf Traders Ltd vs Narok County Government (2022)* eKLR where the court held as follows:-

‘From the jurisprudence in this area of law, the exercise of discretion on costs depends on the facts of each case, and is guided by the principle that costs should follow the event unless the court orders otherwise. Such circumstances as are relevant 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 and
- (viii) the need to promote reconciliation amongst the disputing parties pursuant to Article 159 (2) (c) of *the Constitution*; (ix) public interest.’

10. The Respondents point out that the Appellants have not obeyed a lawful decree of the court. That the Appellants did not come to court with clean hands.

11. The rule of the thumb, therefore, is that costs follow the event unless there are good reasons not to so order. The ‘Good reasons’ that justifies departure from the general rule that ‘costs follow the event’ will vary from case to case. See the Supreme Court of Kenya in the case of *Jasbir Singh Rai & Others vs Tarlochan Rai & Others {2014}* eKLR where it was observed 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. An examination of evolving practices on this question shows that, as an example, matters in the domain of public interest litigation tend to be exempted from award of costs.....”

12. In my earlier ruling, I was categorical that the Appellants were clearly in breach of the court orders and I found that they could not be awarded costs.

13. I reiterate that the reason that the Respondents moved the Lower court was on the averment that the Appellants had failed to comply with the orders of the court. The Appellants have not shown this court that they have duly complied with those orders. Even if the Respondent erred in seeking an eviction, the fact remains that this was prompted by the apparent non-compliance on the part of the Appellant with the orders of the judgement of the trial court.

14. Just like I found during the delivery of the ruling, I find again that an award of costs to the Appellants would be to reward them from their own acts of non-compliance with the Judgment of the lower court.

15. Having looked at the matter, I find that there are good and sufficient reasons to depart from the general rule that costs follow the event.

16. In exercise of my discretion, therefore. I order that each party will bear its own costs on the appeal.



**SIGNED AND DELIVERED (VIRTUALLY) AT MERU THIS 14<sup>TH</sup> DAY OF JANUARY, 2025.**

**H. M. NYAGA,**

**JUDGE.**

**In the presence of:-**

Kinoti C/A

