



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC SUIT NO. E181 OF 2020

JUDY WANJIKU KIROGA.....PLAINTIFF

VERSUS

JOHN WANJUE MUTURI & 2 OTHERS.....DEFENDANTS

AND

DANIEL MAKAI T/A JOMIC INVESTMENT

INTERNATIONAL LIMITED.....1ST INTERESTED PARTY

ALI RASHID HARUK.....2ND INTERESTED PARTY

RULING

The plaintiff brought this suit against the defendants on 13th October, 2020 seeking; a permanent injunction restraining the defendants and interested parties from having any dealing with all that property known as Apartment No. M39-3, Mimosa Court, Five Star Gardens, Nairobi (“the suit property”), an order compelling the 1st defendant to deposit the title for the suit property together with the original power of attorney that had been donated to him by the plaintiff with the plaintiff’s advocates, an order compelling the 1st defendant to render an account of all rental income received from the suit property from September, 2015 to date, an order compelling the 1st defendant to pay to the plaintiff the rent due to the plaintiff after the taking of the said accounts and an order compelling the 2nd defendant to revoke the said power of attorney that was donated by the plaintiff to the 1st defendant in respect of the suit property. The 2nd and 3rd defendants filed a defence on 2nd December, 2020 denying the plaintiff’s claim in its entirety. The 1st defendant filed a notice of appointment of advocates on 23rd October, 2020 but did not file a defence.

On 13th April, 2021, the advocates for the parties informed the court that the parties had settled their dispute but were unable to agree on costs. The court marked the suit as settled and invited the advocates for the plaintiff and the 1st defendant to address it on costs.

The plaintiff’s advocate submitted that the 1st defendant had been given a power of attorney by the plaintiff’s so that he could manage the suit property on behalf of the plaintiff. The plaintiff’s advocate submitted that when the plaintiff wished to revoke the said power of attorney, the 1st defendant refused to surrender the same making the filing of this suit necessary. The plaintiff’s advocate submitted that the 1st defendant was served with a letter before action prior to the filing of this suit. The plaintiff’s advocate submitted that the plaintiff had incurred costs which could have been avoided if the 1st defendant had surrendered the power of attorney aforesaid.

In his submission in reply, the 1st defendant’s advocate submitted that the 1st defendant was entitled to the costs of the suit but would be comfortable if each party bears its own costs. The 1st defendant’s advocate submitted that the plaintiff had a counter-part of the power of attorney which she could use to revoke the power of attorney that she had donated to 1st defendant. The 1st defendant’s advocate submitted that the 1st defendant co-operated in the resolution of the dispute. The 1st defendant’s advocate submitted that the dispute was between family members; a brother in law and a sister in law and that the same was resolved at a preliminary stage of the proceedings. The 1st defendant’s advocate submitted that each party should bear its own costs of the suit.

Section 27 of the Civil Procedure Act gives the court power to determine by whom the costs of and incidental to a suit should be paid. As a general rule, costs follow the event. In the suit before me, the dispute was settled by the parties amicably. There is therefore no winner or loser. From the pleadings on record and the submissions by the parties, I am in agreement with the plaintiff that this suit could have been avoided if the 1st defendant had surrendered the original power of attorney that he held in his possession. The 1st defendant had no

justification for holding on to the said power of attorney once the plaintiff had expressed an intention of revoking the same. Even after a demand before action was made, the 1st defendant did not budge. It was after this suit was filed that the 1st defendant came to the table to discuss the matter with the plaintiff. The 1st defendant had no defence to the plaintiff's claim and none was filed.

I am persuaded that the 1st defendant is liable to the plaintiff for the costs of the suit. I have noted however that the parties are related and that the 1st defendant took the earliest opportunity to resolve the dispute. Taking all these factors into account, I will award the plaintiff the costs of the suit to be paid by the 1st defendant assessed at sum of Kshs.20,000/=.

Delivered and Dated at Nairobi this 24th day of June 2021

S. OKONG'O

JUDGE

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform in the presence of:

Mr. Mutembei h/b for Mr. Mureithi for the Plaintiff

Mr. Chege for the 1st Defendant

Ms. C.Nyokabi- Court Assistant