



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MERU**

**ELC SUIT NO. 45 OF 2007**

**SILAS MBURUNGA MATHIU ..... 1<sup>ST</sup> PLAINTIFF**

**JULIUS KIJOGI MATHIU ..... 2<sup>ND</sup> PLAINTIFF**

***VERSUS***

**MATHIU MUGANE ..... DEFENDANT**

**RULING**

1. What was pending for determination before this court is an application dated 13/5/2019 brought by the plaintiffs herein seeking an order for resurvey of land parcels ABITHUGUCHI/KARIENE/3213 and 3214 respectively. However before the same could be determined the court was informed that the application had been overtaken by events and as such it was withdrawn.

2. The defendant sought to have his costs as they had opposed the application to which the plaintiffs opposed averring that this was a family matter between brothers and sisters so they should not be condemned to pay costs, further the said demolition was made upon mutual consent. The court then directed both parties to file submission on cost and only the defendant filed his dated 8<sup>th</sup> April 2021.

3. The defendant submitted that it is trite law that costs follow the event and this principle is not meant to penalize the losing party but to compensate the successful party for the trouble taken in prosecuting or defending the case. He added that it was the plaintiffs who dragged the defendant to court for more than a decade and even when the matter was concluded they then filed the withdrawn application and he ought to be compensated in costs. He relied on the case of; **Party of Independent Candidate of Kenya V Mutula Kilonzo & 2 Others.**

4. This court has given due considerations to the provisions of section 27 of the Civil Procedure Act which gives the court the discretion in awarding costs. In the normal cause of events, withdrawal of proceedings amounts to a determination in favor of the defendant and the party who withdraws a matter, application or suit is entitled to pay costs to the other party. In the instant case, the plaintiff withdrew his application in court because the application had been overtaken by events, the plaintiff's counsel proceeded to inform the court that the demolition of the plaintiff's house was done by consent of both parties which averments the defendant's counsel did not dispute.

5. In the circumstances, the court will exercise its judicial discretion and not award costs for the withdrawal of the application as the withdrawal was due to the occurrence of certain events which were consented to by both parties. It is also not lost to this court that the parties are still family members. I order that each party pays their own costs of the application.

**DATED, SIGNED AND DELIVERED VIA EMAIL AT MERU THIS 21<sup>ST</sup> DAY OF JULY, 2021**

**HON. LUCY. N. MBUGUA**

**ELC JUDGE**