



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

JUDICIAL REVIEW APPLICATION NO. 8 OF 2019

REPUBLIC.....APPLICANT

VERSUS

LAND ADJUDICATION OFFICER,

AMWATHI MUTUATI LAND ADJUDICATION SECTION.....1ST RESPONDENT

THE HON. ATTORNEY GENERAL.....2ND RESPONDENT

MESHACK M' MBUKIWA.....INTERESTED PARTY

JOHANAH MUTURI MBIKO.....EX-PARTE APPLICANT

RULING

1. Judgment was delivered herein on 30.9.2020 in which the ex parte applicant’s suit was dismissed with costs to the respondents and the interested party.
2. Thereafter the ex parte applicant lodged a notice of appeal on 13.10.2020 but on 5.2.2021, he filed a “*Notice of Withdrawal of notice of appeal*”.
3. On 19.5.2021, the said notice of appeal was marked as withdrawn but the court was to render a ruling on costs. The interested party averred that they were entitled to costs as they had banged in pleadings. The respondents were of a similar opinion.
4. Section 27 (1) of the Civil Procedure Act provides that;

“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;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”.

5. In the case of **Cecilia Karuru Ngayu vs Barclays Bank of Kenya & another (2016) eKLR**, 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 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”.

6. In the matter at hand, the court poses the question “*What is the subject of litigation*”? The ex parte applicant only filed a notice of appeal which to my mind implies an intention to appeal. That intention doesn’t appear to have actualized in the form of a substantive appeal. Thus the subject of litigation was, simply an intention of which the opposing parties were not expected to do much.
7. I have also considered that in the Judicial Review suit, the court already awarded costs to the interested party and the respondent. I

therefore find that the prayer for costs by the interested party and the respondent in relation to the withdrawal of the notice of appeal is not merited. As such, I direct each party to bear their own costs in so far as the aforementioned withdrawal of notice of appeal is concerned.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MERU THIS 14TH DAY OF JULY, 2021 IN PRESENCE OF:

C/A: Kananu

Kiety for respondent

HON. LUCY. N. MBUGUA

ELC JUDGE