



**Narupa (Suing as the Chariman, Kenya National Federation of Sugarcane Farmers,
Transmara Branch) & 19 others v Transmara Sugar Company Limited & 3 others
(Constitutional Petition E012 of 2023) [2024] KEHC 12137 (KLR) (3 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12137 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAROK
CONSTITUTIONAL PETITION E012 OF 2023
F GIKONYO, J
OCTOBER 3, 2024**

BETWEEN

**STEPHEN OLE NARUPA (SUING AS THE CHARIMAN, KENYA
NATIONAL FEDERATION OF SUGARCANE FARMERS, TRANSMARA
BRANCH) 1ST PETITIONER**

JOSEPH T KANCHORY 2ND PETITIONER

WILSON K KIMANU 3RD PETITIONER

J LEKAKENY NAYIOMA 4TH PETITIONER

ANN M PASWA 5TH PETITIONER

JULIUS OLTETIA 6TH PETITIONER

JOHNSTONE SHAAI 7TH PETITIONER

SIMON O NG'ATUNY 8TH PETITIONER

DAVID L KENTYIA 9TH PETITIONER

SIMION L NAIRENKE 10TH PETITIONER

JULIUS M MOSOIKO 11TH PETITIONER

ESTHER RANA 12TH PETITIONER

DAVID TAISWA NGEETI 13TH PETITIONER

DANIEL NAIGUTA 14TH PETITIONER

PATRICK N LEPARAN 15TH PETITIONER

JUSTUS LEPARAN 16TH PETITIONER

CLOUDE NJONJO 17TH PETITIONER



OLKOU OLE KIU 18TH PETITIONER
WILSON KISHOYIAN 19TH PETITIONER
SIMON NCHIROINE 20TH PETITIONER

AND

TRANSMARA SUGAR COMPANY LIMITED 1ST RESPONDENT
HUSSEIN WARIO 2ND RESPONDENT
THE INSPECTOR GENERAL OF POLICE 3RD RESPONDENT
THE ATTORNEY GENERAL 4TH RESPONDENT

RULING

Costs upon withdrawal of the constitutional petition

1. The petitioners made an application to withdraw the petition and all the parties consented to the withdrawal. Except, the 1st respondent prayed for costs which led this court to reserve the matter for ruling on that aspect.
2. The petitioners argued that the petition was withdrawn because Transmara Sugar had ceased harassment of farmers. The petition was a public interest litigation for the benefit of the farmers. The petitioners urged the court to have the petition withdrawn with no order as to costs.
3. The 1st respondent contends that there was never any harassment of the farmers. The petition was overtaken by events as tractors were released. The 1st respondent argued that breach of contract does not make it public interest.
4. In a rejoinder, the petitioners argued that the petition had nothing to do with the tractors.
5. The 2nd, 3rd, and 4th respondents indicated that they were not seeking costs.

Analysis And Determination.

6. This court has considered the arguments of the petitioners and the 1st respondents herein.
7. Is the 1st respondent entitled to costs?
8. The court has discretion to order costs under Rule 26 of the Mutunga Rules; the general rule being that, costs follow the event(Section 27 of the *Civil Procedure Act*, Jasbir Singh Rai & 3 others vs Tarlochan Singh & 4 others [2014] eKLR.)
9. However, judicious exercise of judicial discretion on costs, accommodates, inter alia, the special circumstances of the case while being guided by the ends of justice. The claim of public interest is a relevant factor, in the exercise of such discretion, as would also the motivations and conduct of the parties, prior to, during, and subsequent to the actual process of litigation.
10. From the record, the petition was withdrawn after the parties had filed responses but before substantive submissions to the petition. The petition, at the time of withdrawal, was ripe for hearing. However, the petitioner stated that, the petition was withdrawn because the cause of action had ceased to exist; that the 1st respondent ceased harassment of the petitioners. The 1st respondent seems to refute these



claims, except stated that, the petition was overtaken by events after the tractors were released. The tractors were released upon the order of this court.

11. Therefore, the 1st respondent cannot claim costs upon withdrawal of the petition in such circumstances. The kind of consent given by the parties to the withdrawal of the petition, buried underneath, all other claims including those on costs.
12. Accordingly, each party shall bear its costs of the petition.
13. Orders accordingly.

**DATED, SIGNED, AND DELIVERED AT NAROK THROUGH TEAMS APPLICATION, THIS
3RD DAY OF OCTOBER, 2024.**

HON. F. GIKONYO M.

JUDGE

In the Presence of: -

C/A: Otolu

Bavelaw for Petitioners – Absent

Oduor for Wekhombu for 1st Respondent – Present

