



**PNN v EWN; BWM (Interested Party) (Matrimonial Cause 27 of 2016) [2023] KEHC 20542 (KLR) (20 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 20542 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
MATRIMONIAL CAUSE 27 OF 2016  
HK CHEMITEI, J  
JULY 20, 2023**

**BETWEEN**

**PNN ..... PLAINTIFF**

**AND**

**EWN ..... DEFENDANT**

**AND**

**BWM ..... INTERESTED PARTY**

**RULING**

1. The issue herein was the dispute between the plaintiff and the defendant who were husband and wife in respect to land parcel number Nakuru Municipality Block 22 /3827. When the matter came up for hearing this court directed the parties to find a mutual agreement in which they later came up with. a consent settling the matter dated November 15, 2022.
2. In the said consent the property was declared to belong to the Interested party whom it appears had purchased it from the defendant. The matter essentially settled the issue of ownership save the question of costs which the interested party claims that it ought to be settled by the plaintiff.
3. The court directed the parties to submit over the same which they have done.
4. The Interested party submits that it ought to be compensated by way of costs as it was brought into the suit by the plaintiff as it can be seen from the pleadings on record. That the court went as far as issuing injunction orders against her vide the ruling of July 20, 2017.
5. She said that the plaintiff gave an undertaking on damages which essentially cushioned her in the matter in the event that he losses the case.



6. She cited the provisions of section 27 (1) of the *Civil Procedure Act* and many other authorities which in effect stated that she was entitled to costs and that the same follow events.
7. She said further that she ought not to have been dragged into the marital issues bedevilling the plaintiff and the defendant herein.
8. The plaintiff on his part submitted on the history of the matter and argued that the court cannot award costs to an Interested party who was not central to the suit. He cited the case of *Methodist church of Kenya v Mohamed Fugicha & 3 others (2019) ELR*.
9. He submitted that the issues were between the plaintiff and the defendant and she cannot therefore be on the same pedestal as the defendant and therefore be entitled to costs.
10. He went on to state that the matter was not settled on merit and therefore each party should meet its respective costs. The court should exercise its discretion on those lines.
11. The court has perused the submissions as well as the pleadings on record. The court is satisfied that the matter was settled through a mediated way although not after the plaintiff had testified partially. The Interested party contrary to the plaintiff was an integral part of the matter right from the beginning.
12. In essence and contrary to the plaintiff's assertion she was very central in the determination of the issues as she was claiming a right over the property and the matter could not have been concluded without her participation. Although it was truly a matrimonial issue her presence and inclusion in the suit was necessary.
13. In that case is she entitled to costs.? The consent of course did not settle the issue of her costs. It appears that the plaintiff and the defendant agreed not to pursue the same.
14. Section 27 of the *Civil Procedure Act* clearly states that costs follow events. In essence the losing party must as a matter of course pay the costs. There is the part however which is left to the court, namely, the discretion.
15. *Jasbir Singh Rai & Others vs Tarlochan Rai & Others [2002] eKLR* it was observed that:
 

' It emerges that the award of costs would normally be guided by the principle that 'costs follow the event': the effect being that the party who calls forth the event by instituting suit, will bear the costs if the suit fails; but if this party shows legitimate occasion, by successful suit, then the defendant or respondent will bear the costs. However, the vital factor in setting the preference is the judiciously-exercised discretion of the Court, accommodating the special circumstances of the case, while being guided by ends of justice. The claims of the public interest will be a relevant factor, in the exercise of such discretion, as will also be the motivations and conduct of the parties, prior-to, during, and subsequent-to the actual process of litigation.'
16. In this case the matter although it took several years in court was essentially compromised through the consent which involved all the parties. The consent would not have been possible without the Interested party.
17. The spirit behind this consent in my view was that of Article 159 (2) (c) of the *constitution*. This Article promotes reconciliation between the warring parties. Actually, it presupposes that all parties win in the contests.



18. Taking cue from the same it is evident that the three parties herein won. The issue between the spouses was compromised and the Interested party was able to get the property which had been sold to her by the defendant. It was thus in a way a win -win situation.
19. To burden one of the parties to settle the costs will be undoing what Article 159 of the constitution above anticipated. To the extent that the consent wholesomely settle the matter means that reopening the issue of costs would be a keen to reopening the wound which had healed so to speak. I think respectfully this is a matter which the court ought to exercise its discretion and order that each party should shoulder its own costs.
20. I state so for the reason that the matter was mutually settled through a consent through a direct intervention by this court and more importantly it may be necessary to restore any bridges between the parties. For the above reasons I shall exercise the inherent discretion granted to this court in favour of the three parties.
21. In the premises the application is disallowed and it is ordered that each party shall meet their respective costs in this suit.

**DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAKURU THIS 20<sup>TH</sup> DAY OF JULY 2023.**

**H K CHEMITEI**

**JUDGE**

