



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ELDORET

ELC CASE NO. 158 OF 2016

ROBERT NYONGA ANGATIA.....APPLICANT/PLAINTIFF

-VERSUS-

AGGREY TAIKOSH AZELWA.....RESPONDENT/DEFENDANT

RULING.

[PURSUANT TO ORDER NO. 4 OF THE CONSENT DATED 1ST NOVEMBER, 2018]

1. The Applicant approached the court through the originating summons dated the 10th June 2016, under **Order 37(7) of the Civil Procedure Rules**, claiming he was entitled to one and half (1½) acres of the property known as **Kakamega/Sergoit/351** by dint of adverse possession, having lived on the property since 1997.
2. The suit was set down for hearing on various dates including the 1st November, 2018 when it was settled by consent leaving only the issue of costs for determination by the court. That pursuant to the consent that written submissions on the issue of costs be filed, the learned counsel for the Applicant and Respondent were granted timelines to comply but only the counsel for the Applicant filed their submissions dated the 14th February, 2019. The Applicant prays for costs and urges the court to be minded that despite the issue of costs being discretionary, they normally follow the event.
3. That the court is minded of the decision of the High Court in **Cecilia Karuru Ngayu v Barclays Bank of Kenya and another (2016) eKLR**, wherein the court speaking on the general rule stated that **“the general rule that costs should be awarded to the successful party, should not be departed from without the exercise of good grounds for doing so.”**
4. That further, **Judicial Hints on Civil Procedure 2nd Edition** by Justice (Retired) Richard Kuloba, states at page 99 that the expression **“the costs shall follow the event”** means that the party who on the whole succeeds in the action, gets the general costs of the action.
5. That in this suit, no good grounds have been presented by the Respondent to warrant the court to depart from that accepted general rule on costs. That the Applicant must have incurred expenses in instructing counsel, filing the originating summons and pursuing its prosecution to a successful ending, albeit through a consent.
6. That in view of the foregoing, the court therefore finds and orders that the Applicant is entitled to the costs of the suit.

Orders accordingly.

DATED AND VIRTUALLY DELIVERED THIS 10TH DAY OF NOVEMBER, 2021.

S. M. KIBUNJA

ENVIRONMENT AND LAND COURT JUDGE

IN THE PRESENCE OF;

APPLICANT/PLAINTIFF: ABSENT

RESPONDENT/DEFENDANT: ABSENT

COUNSEL: M/S MORAA FOR MOMANYI FOR APPLICANT AND

MR. OMBOTO FOR RESPONDENT

CHRISTINE: COURT ASSISTANT