



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KAJIADO**

**CONSTITUTIONAL PETITION NO.2 OF 2019**

**ETHICS AND ANTI- CORRUPTION COMMISSION.....PETITIONER**

**VERSUS**

**NATIONAL LAND COMMISSION.....1<sup>ST</sup> RESPONDENT**

**CLARENCE MATHENY LEADERSHIP TRAINING INSTITUTE.....2<sup>ND</sup> RESPONDENT**

**ALTANA CORPORATION.....3<sup>RD</sup> RESPONDENT**

**DR. SALOME MUNUBI..... 4<sup>TH</sup> RESPONDENT**

**JOSIAH OINDO.....5<sup>TH</sup> RESPONDENT**

**AND**

**KENYA RAILWAYS CORPORATION.....INTERESTED PARTY**

**RULING**

What is before me for determination is whether the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents are entitled to costs of the Petition. Their claim for costs has arisen as a result of the Court recording the Consent dated the 30<sup>th</sup> October, 2019 and filed on 31<sup>st</sup> October, 2019, between the Petitioner and the 2<sup>nd</sup> Respondent culminating in the Petition being marked as withdrawn.

The Petitioner submitted that this was a Constitutional Petition which was instituted under public interest as it emanated from the conduct of the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents and hence each party is to bear their own costs.

The 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents submitted that the Petition was not necessary as it was consensual. They sought for their costs as they had to file extensive documents and severally attended court only for the Petition to be withdrawn midway. Further, that the Petitioner has failed to demonstrate that in constitutional petitions each party bears their own costs. They reiterated that this was a private dispute between the parties.

The only issue for determination is whether the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents are entitled to costs. The main issue in dispute herein was the Petitioner’s contention that the compensatory award granted by the 1st Respondent to the 2nd Respondent is an inflated value and not the actual value of the suit land. The Petitioner had also joined two Directors of the 1st Respondent as 4th and 5th Respondents respectively, as they had been responsible for the process of compulsorily acquiring the suit land. It enjoined the 3rd Respondent that had entered into a Consultancy Agreement with the 2nd Respondent in respect of the process of compulsory acquisition of the suit land.

The matter proceeded for hearing but the Petitioner and the 2<sup>nd</sup> Respondent entered into a consent which culminated in the settlement of the Petition.

I note the Consent dated the 30th October, 2019 which was adopted by this Court culminated in the drastic reduction of the Award in respect of the suit land. The 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents sought for their costs and contended that the Petition was a private suit and not a matter of public interest. The Petitioner on the other hand insisted that this was a matter of public interest. I note the Petitioner is established under Article 79 of the Constitution which mandates it to ensure compliance with and enforcement of provisions of Chapter 6 of the said Constitution. Further, section 4(2) of the Leadership and Integrity Act grants enforcement of the said statute to the Petitioner. From this

description it is evident that the Petitioner is a public entity and not a private body.

On the issue of costs, **Section 27** 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; and the fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers: *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.*”**

Black’s Law Dictionary 10<sup>th</sup> Edition defines public interest as **the general welfare of a populace considered as warranting recognition and protection. Something in which the public as a whole has a stake especially an interest that justifies government regulation.’**

As a Court, I had held that the adoption of the consent led to a huge saving of the tax payers money which indeed is in the interest of the public.

In the case of **Kenya Human Rights Commission & Another V Attorney General (2019) eKLR**, the Court of Appeal held as follows: **Public interest litigation, in most cases, is for the benefit of the public and not the persons or entities that institute the proceedings. Condemning an unsuccessful party to pay costs in genuine public interest litigation can become a deterrent. More likely than not, many a party would hesitate to institute suits in defence of the Bill of Rights and the Constitution for fear of being condemned to pay costs. We do not agree with the trial court’s reasoning that the appellants should pay costs because “... the Respondents have had to defend several petitions...”. The record clearly shows that the appellants filed one petition— that is *Petition No. 579 of 2012*. And though it was consolidated with other petitions filed by the other petitioners in their own right and for their own reasons, lumping the petitions together and ordering the payment of costs for that reason without due consideration of the public interest nature of the appellants’ petition, was in our view a misdirection, and it is necessary to interfere with the court’s exercise of discretion on costs. In sum, we set aside the order of costs to the appellants and petitioners in the consolidated judgment of 15<sup>th</sup> February 2013, and substitute it therefor with an order that each party in *Petitions Nos. 552 of 2012, 554 of 2012, 573 of 2012 and 579 of 2012* to bear its own costs in the High Court as well as in this Court.**

In relying on this decision including the legal provision I have cited and based on my analysis above, I find that since the consent that led to the withdrawal of the Petition was in public interest as it culminated in the reduction of the Award hence saving the public monies, I am unable to penalize the Petitioner to pay the costs to the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents but direct that each party do bear their own costs.

**Dated signed and delivered in open court at Kajado this 3<sup>rd</sup> March, 2020**

**CHRISTINE OCHIENG**

**JUDGE**

**IN THE PRESENCE OF:**

M/S. Kendunyua holding brief for Muraya for petitioner holding brief for Macharia for Interested Party.

Wambua holding brief for Mr. Aketo for 3<sup>rd</sup> respondent

Court assistant -Mpoye