



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

ELC NO. 51 OF 2014

THE COUNTY GOVERNMENT OF KILIFI..... PLAINTIFF

-VERSUS-

1. IBRAHIM MUSA MOHAMED

2. STEPHEN MACHARIA KIMANI

3. KILFI DISTRICT LAND ADJUDICATION & SETTELEMENT OFFICER

4. KILIFI DISCTRICT LAND REGISTRAR

5. DIRECTOR OF LANDS ADJUDICATION & SETTLEMENT OFFICER

6. CHIEF LAND REGISTRAR

7. THE ATTORNEY

8. NATIONAL LAND COMMISSION

9. NATIONAL EDUCATION BOARD

10. KILIFI COUNTY EDUCATION BOARD

11. CABINET SECRETARAY, MINISTRY OF EDUCATION,

SCIENCE AND TECHNOLOGY.....DEFENDANTS

RULING

1. By a Notice of Motion dated 3rd March, 2020, the 1st Defendant seeks orders that this suit be dismissed for want of prosecution. The 1st defendant is also asking for costs of the application.

2. The application is supported by the affidavit of Ibrahim Musa Mohamed, the 1st defendant sworn on 3rd March, 2020. It is the 1st defendant's contention that the plaintiff has not taken any steps to have the matter set down for hearing since the year 2014 and that the continued delay in the trial of the matter is a clear indication that the plaintiff has lost interest in the matter and is no longer keen in pursuing the suit.

3. In response to the application, the plaintiff filed a replying affidavit sworn by Farida Jadi advocate for the plaintiff on 12th October, 2020. It is deposed that the suit properties herein were revoked and therefore the suit herein has been overtaken by events. The plaintiff wants the court to mark the matter as settled.

4. From the application, the response and the submission make, it is not in dispute that the suit herein has been overtaken by events. Whereas the 1st defendant wants the suit dismissed for want of prosecution, the plaintiff on the other hand is urging the court to have the case marked as closed.

5. In my view, the only issue left for determination is the question of costs, the plaintiff having conceded that the suit has since been overtaken by events. In the case of **Cecilia Karuru Ngayu –v- Barclays Bank of Kenya & Another (2016) eKLR**, it was held that:

“It matters not that the case was withdrawn or compromised or intended to be compromised as in this case, what matters is whether the second defendants are entitled to costs for the trouble undertaken by them in defending these proceedings.”

6. Similarly, in the case of **Kay Construction Company Limited –v- Eco Bank Kenya Ltd & 6 Others (2015)eKLR**, it was held that:

“.....the interpleader bank was put to costs by the suit for which recompense is in order. It is entitled to costs upon the withdrawal of the suit for having been through this litigation.”

7. It is also clear that the issue of costs is the discretion of the court as provided under Section 27 of the Civil Procedure Act. The basic rule on attribution of costs is that costs follow the event. However, it is to be recognized that the principle that costs follow the event is not to be used to penalize the losing party; rather it is for compensating the successful party for the trouble taken in prosecuting or defending the case.

8. In determining the issue of costs, Mativo, J in the case of **Cecilia Karuru Ngayu (supra)** stated that the court is entitled to look inter alia, the conduct of the parties; the subject of litigation; the circumstances which led to the institution of the proceedings; the events which eventually led to their termination; the stage at which the proceedings were terminated; the manner in which they were terminated; the relations between the parties and the need to promote reconciliation amongst the disputing parties pursuant to Article 159 (2) (c) of the constitution.

9. In this case, the plaintiff is the one who filed the suit. In the replying affidavit filed herein, it is deposed that vide a letter dated 7th October 2015 the National Land Commission directed that the titles of the suit properties be revoked and that the land reverts back to the community. It is the plaintiff’s contention that the suit herein has been overtaken by events as the orders sought by the plaintiff in the suit have been granted. The plaintiff now wants the file marked as closed.

10. From the foregoing, it is clear that the plaintiff was aware of the revocation of the titles to the suit properties way back in the year 2015. It has taken the plaintiff about five years to move the court to have the matter marked as settled or closed. The plaintiff no doubt was woken up by the 1st defendant’s application herein which seeks to have the suit dismissed for want of prosecution. No doubt, the suit has been hanging over the head of the 1st defendant from the year 2014 to date. In my view, the plaintiff was to blame in not moving the court at the earliest opportunity possible to have the matter closed. In my view, the 1st defendant is entitled to costs for the trouble undertaken by him in defending these proceedings.

11. In the result, I order that the suit be marked as settled. Further, I order that the plaintiff do pay the 1st defendant the costs of this case to be agreed or taxed by the taxing master of this court.

12. Orders accordingly.

DATED, SIGNED and DELIVERED at MOMBASA this 10th day of November, 2020

C.K. YANO

JUDGE

IN THE PRESENCE OF:

Yumna Court Assistant

C.K. YANO

JUDGE