



Macharia t/a Beulah Timber & Hardware & another v Dhanjil & another (Land Case e180 of 2024) [2025] KEELC 6539 (KLR) (1 October 2025) (Ruling)

Neutral citation: [2025] KEELC 6539 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
LAND CASE E180 OF 2024
CA OCHIENG, J
OCTOBER 1, 2025**

BETWEEN

**FAITH WARAU MACHARIA T/A BEULAH TIMBER &
HARDWARE 1ST PLAINTIFF**

JOHN MWANGI GITHAE T/A ROMES TIMBER 2ND PLAINTIFF

AND

HARJINDER KAUR DHANJIL 1ST DEFENDANT

**JOVAN HUMPHREY KARIUKI ING'URA T/A MORAN
AUCTIONEERS 2ND DEFENDANT**

RULING

1. The Plaintiffs withdrew this suit vide a Notice of Withdrawal dated the 23rd May 2024. The only issue for determination is on costs payable as between the Plaintiffs and the Defendants. The issue was canvassed by way of written submissions pursuant to this Court's orders of 2nd April 2025.
2. In their submissions, the Plaintiffs contend that they filed the suit claiming ownership of LR No. 209/2762/26, which they alleged to have purchased from the 1st Defendant's mother who is now deceased. Further, that their action was triggered by a proclamation for rent from the 1st Defendant through the 2nd Defendant, served on them on 24th April 2024. Simultaneously with the proclamations, they were also served with a Court Order issued on 4th December 2023 in Milimani HCP& A No. 1491 of 2017, which indicated that the suit property was part of the estate of the late Guardial Kaur Sihra.
3. They submit that at the first mention of the case inter partes, they sought to negotiate with the Defendants and the Defendants' Counsel intimated to them that the Power of Attorney which was used to transfer the suit property to them, had been revoked by the time the transfer was executed thus they withdrew the suit based on that information in order to save Court's time.



4. They contend that although costs follow the event, the rule can be varied on the discretion of the Court and the circumstances of the case. To this end, they relied on the case of *Jasbir Singh Rai & 3 Others v Tarlochan Singh Rai & 4 Others* [2014] eKLR. They urged the Court to order that each party to bear its costs considering that the case was withdrawn before the Defendants could file any document, not even a Notice of Appointment.
5. On their part, the Defendants submit that it is trite that costs follow the event and cite the case of *Jasbir Singh Rai & 3 Others v Tarlochan Singh Rai & 4 Others*, (supra) to submit that a party who calls forth the event by instituting a suit, will bear the costs if the suit fails.
6. They urge the Court to consider that they have already expended resources in hiring Counsel, instructing them to prepare and take the conduct of the matter and that their Counsel made several appearances in Court and oral arguments to the application filed by the Plaintiffs.
7. The Defendants also relied on the following decisions: *John O. Ochanda v. Telkom Kenya limited*, Motion Application No. 25 of 2014, *Kipchumba Murkomen & another v Jubilee Party & 5 others* [2020] eKLR and *Hussein Muhumed Sirat v Attorney General & Another* [2017] eKLR.

3 Analysis and Determination

8. Having considered the submissions, the only issue for determination is whether the Plaintiffs should bear costs of the suit.
9. The Defendants seek the costs of this suit insisting that they had hired a Counsel who had made several court appearances. The Plaintiffs on the other hand have explained the reason that led to their filing of this suit including withdrawing it. From the Court record, I note the Defendants' Counsel except for making a few Court appearances had not filed any documents including even the Notice of Appointment of Advocate.
10. Order 25 Rule 1 of the Civil Procedure Rules gives liberty to a Plaintiff to withdraw or discontinue suit. Further, Order 25 Rule 3 provides that:

“Upon request in writing by any Defendant the registrar shall sign judgment for the costs of a suit which has been wholly discontinued, and any Defendant may apply at the hearing for the costs of any part of the claim against him which has been withdrawn.”
11. Further, Section 27 of the *Civil Procedure Act* provides that:

“27(1) 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 give all the necessary directions for the purposes aforesaid; and the fact that the court 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 direct.”
12. While Section 27 (1) provides a general rule that costs follow the event, but the Court has discretion to depart from the rule only for good reason. In a persuasive decision, *Mativo J* outlined reasons that may persuade a court to depart from the general rule in the context where a suit has been withdrawn.



He stated as follows in *Cecilia Karuru Ngayu v Barclays Bank of Kenya & Another* [2016] KEHC 7064 (KLR);

“To my mind, in determining the issue of costs, the court is entitled to look at inter alia (i) the conduct of the parties, (ii) the subject of litigation, (iii) the circumstances which led to the institution of the proceedings, (iv) the events which eventually led to their termination, (v) the stage at which the proceedings were terminated, (vi) the manner in which they were terminated, (vii) the relationship between the parties and (viii) the need to promote reconciliation amongst the disputing parties pursuant to Article 159 (2) (c) of the Constitution. In other words the court may not only consider the conduct of the party in the actual litigation, but the matters which led to the litigation, the eventual termination thereof and the likely consequences of the order for costs.....”

13. In this instance, I note the Plaintiffs provided a background of what triggered this suit. The Plaintiffs explained that they filed this suit claiming ownership of LR No. 209/2762/26, which they purchased from the 1st Defendant’s mother who is now deceased. Further, that their action was triggered by a proclamation for rent from the 1st Defendant through the 2nd Defendant, served on them on 24th April 2024. Simultaneously with the proclamations, they were also served with a Court order issued on 4th December 2023 in Milimani HCP & A No. 1491 of 2017, which indicated that the suit property was part of the estate of the late Guardial Kaur Sihra. They further explain that it is the Defendants’ Counsel who intimated to them that the Power of Attorney which was used to transfer the suit property to them, had been revoked by the time the transfer was executed thus they withdrew the suit based on that information. I note the Defendants have not rebutted these averments.
14. The Supreme Court of Kenya in the case of *Jasbir Singh Rai & Others vs Tarlochan Rai & Others* cited by both parties herein also gave an example of what a good reason could be to warrant a court to deviate from the general rule. The Court held that:

...in the classic common law style, the courts have to proceed on a case by case basis, to identify “good reasons” for such a departure. An examination of evolving practices on this question shows that, as an example, matters in the domain of public interest litigation tend to be exempted from award of costs.....”
15. One key question we need to ponder is that can a Defendant who never entered appearance nor filed a defence but made court appearances be entitled to costs. Before responding to this question, it is important to highlight the essence of an Appearance as stated in Order 6 of the Civil Procedure Rules. From a reading of this legal provision, it brings out the import of an Appearance and it is clear that failure to enter an appearance means one is not in the suit. If so, what happens to the several court appearances. From a reading of the Advocates Remuneration Order, it is implied that assessment of costs envisages a situation where an appearance had been filed or suit defended.
16. Based on the facts before Court while associating myself with the decisions cited, noting that this suit emanated from certain actions of the Defendants, I find that the Defendants are not entitled to costs since the suit was withdrawn before they entered an Appearance nor filed a Defence. I opine that it is immaterial whether they made several court appearances or not.
17. In that regard, I direct that each party do bear their own costs.

DATED SIGNED AND DELIVERED AT NAIROBI THIS 1ST DAY OF OCTOBER, 2025

CHRISTINE OCHIENG



JUDGE

In the presence of:

Osoo for Plaintiff

Onyinkwa for 1st and 2nd Defendants

Court Assistant: Joan

