



**REPUBLIC OF KEYA**

**IN THE ENVIRONMENT AND LAND COURT AT MERU**

**ELC MISC APPLICATION NO. 78 OF 2015**

**BONIFACE GAKONYO KARAMU.....1<sup>ST</sup> APPLICANT**

**MWITI GAICIMA.....2<sup>ND</sup> APPLICANT**

**VERSUS**

**KINYUA KAJIU JOSPHAT.....RESPONDENT**

**RULING**

1. This miscellaneous suit is finalized, the same having been withdrawn. The matter had been filed herein where by the applicant had sought for orders for the transfer of the Marimanti PM.CC No. 22/14 from Marimanti court to Meru Chief Magistrates court.
2. The court was urged to determine the issue of costs, of which parties have filed submissions.
3. Applicant contends that they had a valid reason to file the application, as they were unhappy with the way the trial magistrate was conducting the case. The magistrate has since been transferred and so applicant now has no cause to worry.
4. Applicant avers that since the application was withdrawn, the respondent cannot be said to be a successful party, as the application was timeously withdrawn.
5. Applicant has cited the case of **Jasbin Singh Rai and 3 others vs Tarlochan Signh Rai and 4 others** to buttress the position that the court has discretion to award or not to award costs in accordance with reason and justice.
6. Respondent on the other hand argues that costs follow events, that respondent was dragged into this litigation 5 years ago and has incurred heavy financial burden.
7. The respondent has relied on the cases of; **Terra Coffee Estate Ltd vs Swani Coffee Estate Ltd (Milimani Civil case NO. 175 of 2007) and Cecilia Karuru Ngayu vs Barclays Bank of Kenya & another – High court (at Nyeri civil case no. 17 of 2014).**
8. Both parties are in agreement that the applicable law is to be found under **Section 27 (1) of the Civil Procedure Act**. Thus if there are any good reasons advanced by the applicant, the court may not condemn them to pay costs.
9. I have perused the entire record and I find that the application was not withdrawn timeously as alleged. At no time did the applicant move the court on his own motion to state that circumstances had changed at Marimanti court.
10. What is apparent is that when the matter was filed in 2015, the applicant obtained orders in prayer 2 speedily (stay of proceedings) on 9.11.2015. Thereafter, nothing much happened until 20.4.2018 when the court on its own motion retrieved the file from the registry gave a mention date for 16.7.2018 for directions and effected service upon the parties' advocates.
11. I am therefore in agreement with respondent's contentions that they were dragged into this litigation for the last 3 or so years.
12. However, I have also considered that the application was withdrawn and not prosecuted. As such, I direct that respondent gets 1/3 costs of the suit.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS DAY OF 20<sup>TH</sup> MARCH, 2019 IN THE PRESENCE OF:-**

C/A: Kananu

C.P Mbaabu for applicant

Applicant

**HON. LUCY. N. MBUGUA**

**ELC JUDGE**