



**Lamu Estate Agency Limited v Attorney General & 2 others; Nyaga
& another (Interested Party) (Environment and Land Petition
14 of 2015) [2025] KEELC 7509 (KLR) (4 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 7509 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT AND LAND PETITION 14 OF 2015
FM NJOROGE, J
NOVEMBER 4, 2025**

BETWEEN

LAMU ESTATE AGENCY LIMITED PETITIONER

AND

THE HON ATTORNEY GENERAL & 2 OTHERS & 2 OTHERS ... DEFENDANT

AND

MARY IMMACULATE NYAGA & ANOTHER INTERESTED PARTY

RULING

1. On 4th June 2025, the Petition was marked as withdrawn and file marked closed save for the issue of costs, which were to be agreed between the petitioner and the 1st and 3rd respondents only, or taxed if there is no agreement between the parties. There was no appearance for the 2nd respondent and the 4th respondent. Miss Swaleh appeared for the 3rd respondent. Mr Ojwang appeared for the AG while holding brief for Miss Lutta.
2. Miss Muthoni held brief for Mr Osman for the petitioner and informed the court that a Notice of Withdraw of Petition had been filed dated 26th March 2025. Mr Ojwang confirmed having received that notice. Ms Swaleh too confirmed that she was served. It was on that basis that the court proceeded to make the order on costs.
3. On 18th September 2025 Mr Makworo appeared before Court and stated that he had filed an application dated 2nd July 2025 which had not been replied to. Miss Lutta confirmed service but stated that the application does not affect her client. Mr Athman for the petitioner stated he had not seen the application but nevertheless indicated that he would be opposing the same when served. The court ordered him to be served and schedule the hearing for 14th October 2025.



4. The Motion filed by the 2nd interested party seeks that the court do review its orders made on fourth June 2025 and issue an award of costs to the second interested party.
5. The application is promised on the grounds at the foot thereof namely, that the parties had already filed their written submissions and were awaiting delivery of judgment scheduled for 4th June 2025 but before the same could be delivered the petitioner withdrew the suit leaving the court to make a determination on the issue of costs; that the court ordinary delivers its judgment via email and since there was no application to arrest the judgment, counsel expected the judgment to be delivered on the said date; that due to that assumption regarding mode of delivery of judgment via email, no attendance was made by counsel; that the petitioners had earlier withdrawn the petition by notice and attended Court only to adopt the withdrawal of the petition; that non-attendance in court was not intentional but was premised on assumption that the court would deliver its judgment via email as it usually does; that the 2nd interested party wishes to tax its bill of costs but cannot do so unless the court issues orders that the second interested party is entitled to the same.
6. I have perused the file record for this case and I have verified indeed that Mr. Makworo has been consistently appearing for the second interested party. In fact, the second interested party moved this court in an application dated 8th May 2024 which sought extensive orders. Though the matter had been fixed for hearing and parties had prepared for the hearing, when this matter came up for judgment it was marked as withdrawn and this court awarded costs only on the basis of the persons who appeared on 4th June 2025.
7. In this court's view, Mr Makworo has given a good reason as to why he was not present in court on that date. The court has been delivering judgment and rulings in that manner that he states. However, this matter was on the cause list and was called out on the day of judgment for the confirmation of the notice of withdrawal. It is reasonable that parties who were waiting for judgment in the afternoon by way of email may not have been aware that it was being called in the morning for the purpose of withdrawal. This court is justified to believe that, based on the record of earlier attendances which are verifiable from the record, they would have attended and made their representations.
8. In the circumstances set out herein above, the order was made without hearing them as though they had no interest in the matter. I think the mention amounted to an ambush, but which ambush can not be blamed on any person but only on the circumstances of that day.
9. Mr Makworo was not heard on behalf of the 2nd interested party, who had been participating in the matter all along, on the issue of costs. It was not the intention of the court to issue an order without hearing any party.
10. Consequently, I am of the view that this is a proper matter for the exercise of this court in review, and I find that the order made by this court on 4th of June 2025 erroneously excluded the second interested party, and possibly other parties, from an award of costs. Consequently, the said order made on 4/6/2025 is hereby reviewed to read as follows:

“The petition is now marked as withdrawn and file marked as closed save for the issue of costs, to be agreed between the petitioner and the respondents and the interested parties, or taxed if there is no agreement.”

11. It is so ordered.

DATED, SIGNED AND DELIVERED AT MALINDI ON THIS 4TH DAY OF NOVEMBER, 2025.

MWANGI NJOROGE



JUDGE, ELC, MALINDI.

