



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CIVIL CASE NO. 698 OF 2011

NELLIE GACHIKU KAROBIA.....1ST PLAINTIFF

GODFREY KINUTHIA KAROBIA.....2ND PLAINTIFF

VERSUS

TOWN COUNCIL OF KIKUYU.....DEFENDANT

RULING

1. By originating summons dated 7th December 2011, the plaintiffs filed this suit against the defendant who had threatened to demolish the plaintiffs' wall in LR NO. KABETE/KIBICHIKO/2614 and LR NO. KABETE/KIBICHIKO/2615 (hereinafter referred to as "the **suit property**"). The basis of the demolition was that the defendant had alleged that the suit property had encroached on the road access.
2. On 5th September 2012, the Hon. Lady Justice Mwilu (as she then was) made an order requiring the District Land Surveyor to undertake the survey and ascertain the boundaries.
3. The surveyor's report dated 22nd October 2012 and filed in court on 8th November 2012 confirmed that the plaintiffs had not encroached on the road access. The report was adopted by the court on 20th January 2015 and the dispute was settled.
4. The issue which is pending is that of costs, which the parties have not been able to agree.
5. I have gone through the court record. The letter dated 12th September 2011 by the defendant to the 1st plaintiff, is the reason why the plaintiffs moved to this court. The surveyor's report filed and adopted by the court is in favour of the plaintiffs. The plaintiffs would not have come to court had they not been served with the said notice by the defendant.
6. Section 27 (1) 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."

The above provision is very clear. Costs follow the event. As stated earlier the survey report was in favour of the plaintiffs. They are entitled to costs.

7. Accordingly the plaintiffs are hereby directed to present their bill of costs for assessment in the normal manner.

It is so ordered.

Dated, signed and delivered in Nairobi on this 4TH day of APRIL 2019.

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L. KOMINGOI

JUDGE

In the presence of:-

.....Advocate for the 1st & 2nd Plaintiffs

.....Advocate for the Defendant

.....Court Assistant