

**REPUBLIC OF KENYA**

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

**ELC APPEAL NO. E017 OF 2024**

**FRANCIS KAMONDO GITHII.....**

**APPELLANT**

**VERSUS**

**ESTHER MUTHONI WACHIRA.....**

**RESPONDENT**

**JUDGMENT**

- 1.** The respondent in this appeal filed the suit CMELC NO 4 OF 2024 claiming entitlement to parcel no. L.R/LAIKIPIA/KINAMBA/BLOCK 1/1360 by way of adverse possession. The appellant then filed a Notice of Preliminary Objection dated 21.6.2024 contending that the trial court had no jurisdiction to entertain a claim of adverse possession. In a ruling delivered on 26.8.2024, the trial court upheld the preliminary Objection and directed each party to bear their own costs of the suit.
- 2.** The above ruling forms the subject matter of this appeal which was lodged vide a memorandum of appeal dated

30.8.2024. The appellant faults the trial court for not awarding costs of the suit to him in terms of the provisions of Section 27 of the Civil Procedure Act. He urges this court to vary the ruling of the trial court and award him costs of the suit.

**3.** The appeal was canvassed through written submissions. The appellant's submissions are dated 5.9.2025 where he reiterates that he ought to have been awarded costs of the suit. To buttress his arguments, the appellant proffered the case of **Rai & 3 Others v Rai & 4 Others (Petition 4 of 2012) (2014) KESC 31 (KLR) (4 March 2014)**.

**4.** The submissions of the respondent are dated 1.10.2025 where it is argued that the trial court was perfectly entitled to find that this was not a case in which costs follow events, that the decision reflected a careful consideration of the minimal procedural steps taken and the need to avoid punitive or disproportionate outcomes. The respondent relied on the case of **Garum Investment Limited & Another v Aguthi**

**Enterprises Limited; Hussein Ibrahim Nuni  
(Hussein Ibrahim Nuni) (2020) KEELC 3471 (KLR).**

5. I have considered the rival arguments made before the trial court as well as before this court. The issue falling for determination is whether the ruling delivered on 26.8.2024 before the trial court should be varied so as to award costs to the appellant. Indeed, the trial court did not give reasons in regard to the decision on costs. Pursuant to the provisions of Section 78 of the Civil Procedure Act, this court has powers to remand the case back to the trial court for purposes of giving reasons on award of costs. But again, the court also has powers to determine a case finally.
6. To this end, I find that the controversial question of jurisdiction of the Magistrates' Courts in claims for adverse possession was only recently settled by the Court of Appeal in the case of **Sugawara v Kiruti (Sued in her capacity as the administratrix of the Estate of Mutarakwa Kiruti Lepaso alias Mutaragwa Kiruti Lepaso alias Mutaragwa Kiroti**

**Leposo and in her own Capacity) & 3 others (Civil Appeal E141 of 2022) [2024] KECA 1417 (KLR) (11 October 2024) (Judgment) Neutral citation: [2024] KECA 1417 (KLR),** a decision delivered on 11.10.2024. Thus, whichever angle one looks at the issue, it would be unjust to burden any party with costs in such circumstances.

7. The supreme court of Kenya in the case of **Baridi Felix Mbevo v Musee Mati 82 & Others (2021) eKLR** cited the case of **Jasbir Singh Rai & Others S.C. Petition 4 of 2012 (2014) EKLR** where the same court had this to say on costs;

**“On discretion, this court found: Although there is eminent good sense in the basic rules of costs - that costs follow the event - it is not an invariable rule and, indeed, the ultimate factor on award or no-award of costs is the judicial discretion. It follows, therefore, that costs do not, in law, constitute an unchanging consequence of**

**legal proceedings - a position well illustrated by the considered opinions of this court in other cases”**

**8.** Courts of law exist to administer justice, and in the case at hand, I find no reasons to vary the ruling delivered by the trial court. In the end, this appeal is hereby dismissed and each party shall bear their own costs of the suit.

**DATED, SIGNED AND DELIVERED AT NYAHURURU  
THIS 1<sup>ST</sup> DAY OF DECEMBER 2025 THROUGH  
MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

**In the presence of:**

Court Assistant - Vanessa

Ms. Njuguna holding brief for Wahome Gikonyo for  
Appellant

Ndegwa Wahome for Respondent

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