



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

ELC CASE NO. 602 OF 2017

(Formerly Nairobi ELC CASE NO. 481 OF 2016)

SAMUEL KAIMENYI ANAMPIU & 3 OTHERS.....PLAINTIFFS

VERSUS

COUNTY GOVERNMENT OF KAJIADO.....1ST DEFENDANT

THE NATIONAL LAND COMMISSION.....2ND DEFENDANT

RULING

What is before me for determination is the issue of costs as between the Plaintiffs and Defendants. From the chronology of events herein, I note the Plaintiffs filed a suit on 10th May, 2016 together with a Notice of Motion application brought under certificate of urgency seeking injunctive orders to restrain the 1st Defendant from interfering with plot no. 160.

In the Plaint, the Plaintiffs sought for judgment against the Defendants for:

- a) There be a declaration that the parcel of land known as Plot 160 is and continues to be held by the 1st Defendant in trust for the residents of the Police Sacco for purposes of construction of a nursery school as per the approved plan.
- b) A permanent injunction be issued restraining the 1st Defendant, its employees, agents, servants and/or officers from constructing its sub-county offices on that parcel of land known as Plot No. 160.
- c) Costs
- d) Any other relief that this Honourable Court will deem fit to grant.
- e) Interests on (c) above.

The 2nd Defendant entered appearance on 23rd May, 2016 while the 1st Defendant entered appearance on 25th August, 2016. The Defendants however never filed a response to oppose the Application nor file Defences to controvert the Plaintiffs' averments. On the 9th July, 2018, the Plaintiffs and the 1st Defendant entered into a consent where the 1st Defendant accepted that it shall not utilize suit land and in the event it intended to utilize it, it should undertake wider consultations. From these events, it is clear the suit between the Plaintiffs and 2nd Defendant is still pending.

The Plaintiffs and 1st Defendant however failed to agree on the issue of costs and have filed their respective submissions to enable the court make a determination on the same.

Analysis and Determination

The only issue for determination at this juncture is which party is responsible for the costs of the suit.

Before I delve into the issue of costs, from the contents of the consent, insofar as the 2nd Defendant did not participate in it, I opine that the said consent compromised the suit. From the court records, it is clear the parties had attended court several times before the consent was recorded.

I note the Plaintiffs have claimed costs which the 1st Defendant is opposed to. The 1st Defendant submitted that costs are awarded as a discretion and relied on various cases including **Little Africa Kenya Limited Vs Andrew Mwiti Jason Civil Case No. 149 of 2011 (eKLR)**; **Stanley Kaunga Nkarichia Vs Meru Teachers College & Anor (20160 eKLR)**; **Cecilia Karuru Ngayu Vs Barclays Bank of Kenya & Credit Reference Bureau Africa Ltd**; **Rufus Njuguna Miringu & Another Vs Martha Murithi & 2 Others (2012) eKLR** and **Party of Independent Candidate of Kenya Vs Mutula Kilonzo & 2 Others** to buttress its arguments.

The Plaintiff on the other hand relied on the following cases of **Cecilia Karuru Ngayu Vs Barclays Bank of Kenya & Credit Reference Bureau Africa Ltd** and **Stanley Kaunga Nkarichia Vs Meru Teachers College & Anor (2016) eKLR** to support its argument for costs.

Section 27 (1) of the Civil Procedure Act provides as follows: ‘ **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.**’

Justice Kuloba’s (as he then was) in his book: **Judicial Hints on Civil Procedure** 2nd edition at page 99 in discussing the issue of ‘costs’ and ‘event’ had this to say:

“The words “the event” mean the result of all the proceedings to the litigation. The event is the result of entire litigation. It is clear however, that the word ‘event’ is to be regarded as a collective noun and is to be read distinctively so that in fact it may mean the “events” of separate issues in an action. Thus the expression “the costs shall follow the event” means that the party who on the whole succeeds in the action gets the general costs of the action, but that, where the action involves separate issues, whether arising under different causes of action or under one cause of action, the costs of any particular issue go to the party who succeeds upon it. An issue in this sense need not go to the whole cause of action, but includes any issue which has a direct and definite event in defeating the claim to judgment in the whole or in part.’

In the case of **ORIX OIL (KENYA) LIMITED v PAUL KABEU & 2 OTHER [2014] eKLR** the court stated that:

‘...the court should have been guided by the law that costs follow the event, and the Plaintiffs being the successful party should ordinarily be awarded costs unless its conduct is such that it would be denied the costs or the successful issue was not attracting costs. None of those deviant factors are present in this case and the court would still have awarded costs to the Plaintiffs, which I do.

Further in the case of **Morgan Air Cargo Limited v Evrest Enterprises Limited [2014] eKLR** my brother Justice F. Gikonyo while dealing with an issue of costs where a suit had been compromised by consent, deemed the Plaintiffs’ a successful Party and granted it costs.

In the current scenario, I note the Plaintiffs had sought injunctive orders against the Defendants to restrain them from interfering with the suit land. The 1st Defendant who had placed materials thereon to commence construction entered into a consent accepting to cease interfering with the suit land and undertook to consult widely in case it intended to commence activities thereon . The 2nd Defendant however never filed a response nor defence to oppose the Plaintiffs’ averments. From the proceedings herein, I note the Plaintiffs and 1st Defendant attended court severally and later on the suit was compromised by way of a consent. Further, since there were no Defences filed to controvert the Plaintiffs’ averments, I find that the Plaintiffs indeed were the successful party in the proceedings herein since the consent order entered into with the 1st Defendant actually allowed the prayers the Plaintiff was seeking in the suit.

In the circumstances and being persuaded by the cited legal provisions, including the various authorities and citation above, I find that the Plaintiffs are indeed entitled to costs and will proceed to award it to them.

The costs are to be taxed before the Deputy Registrar and borne by both Defendants equally.

Date signed and delivered in open court at Kajiado this 20th May, 2019

CHRISTINE OCHIENG

JUDGE