

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ELC NO. E38 OF 2024

BELLA HILL MANAGEMENT LTD.....
PLAINTIFF

VERSUS

VIPINGO DEVELOPMENT PLC... ..
DEFENDANT

RULING

1. The notice of Motion before me for determination is dated **18/7/2025** seeking review of the Ruling to set aside the order that the costs be borne by the Defendant and substituting it with an order that each party bear their own costs. Earlier on, when the suit came up for mention, the court was told the same had been settled, that the sublease had been registered.
2. On 18/3/2025, parties were ordered to agree on costs within **7** days or in default to file their submissions on the costs issue, the plaintiff within **10** days and the defendant within **13** days from 18/3/2025. The court observed that no submissions had been filed by any of the parties but nevertheless gave the impugned ruling dated 8/4/2025. It has now emerged that the applicant failed to file submissions by 31/3/25 deadline and filed them on 7/4/2025, just 1 day before the impugned ruling was issued. The Defendant therefore filed submissions on the issues of costs later than the

period the court had ordered it to. In its ruling, the court condemned the defendant to costs.

3. The defendant has averred in his application that the observation that neither party had filed submissions was an error on the face of the record, and this court never considered the law cited by the defendant in its ruling and the Defendant was thus condemned unheard and this was an infringement of its right to a fair trial; that had the Defendants submissions been considered, the court would have possibly reached different decision on cost; that the Plaintiff was not a successful party in this case and so the rule that costs follow the event do not apply.
4. The application is opposed by the Plaintiff through the sworn Affidavit of **George Ng'ang'a Mbugua**, director of the plaintiff on the basis that the orders sought transcend the review jurisdiction of court; that the application calls for court to sit on appeal on its own decision, that the decision cannot be reviewed simply because it is perceived to be erroneous, or that a different view could have been taken on a point of law or fact; that the applicant has failed to ask the court to consider the submissions; that there has been unreasonable delay; that no excuse has been provided for the delay and the application is an afterthought; that the suit was filed to compel the defendant to act after a prolonged and unjustified failure to act as it should have - two years; that the applicant left

the plaintiff with no recourse other than seek redress in court; that it was only after suit was filed that the Plaintiff filed suit that the applicant finally issued title to the plaintiff, 5 months after the lodging of the plaint; that the court exercised its discretion having regard to the history of the matter; that in any event the plaintiff's submissions were also not considered; that the court assessed the circumstances of the case even without submissions and gave a judgment based on its discretion; that therefore, the court considered all the core issues involved and gave the correct decision and **Section 27 CPA** allows the court to award costs entirely based on discretion.

5. I have considered the submissions of the applicant dated 5/12/2025 in support of the motion and also the submissions on the defendant dated 19/12/2025 in opposition thereto. I have considered the grounds relied on by the applicant but I must reject the application for reasons.
6. On a preliminary basis, it sounds a bit strange that an applicant can file submissions 7 days after a deadline imposed by a court of law and expect the court to read those submissions, and even apply for a review of the court's decision after that on the basis that the submissions were not considered. However, the main emphasis is that it is not mandatory for submissions to be called for in issues regarding costs. The entire file record is before the court and the

discretion allowed in Section 27 of the CPA is unfettered. Whether or not the court had asked for the submissions, it was able to do without them, but it involved the parties nevertheless.

7. I have rejected the application dated 18/7/2025 on four grounds as follows:

i) *First, submissions are not mandatory in every case. The court is also aware of statutory provisions and case law and indeed many cases have been determined without submissions. See the case of **Daniel Toroitich Arap Moi v Mwangi Stephen Muriithi & another [2014] eKLR** where the court stated that “submissions are generally parties’ “marketing language”, each side endeavouring to convince the court that its case is the better one,” and that “...indeed there are many cases decided without hearing submissions but based only on evidence presented.”*

ii) *Even without submissions, the court considered all the relevant factors that need to be considered in respect of costs and gave a reasoned judgment on the same. The court stated as follows on the substance of the issue of costs:*

“As a matter of general principle, costs follow the event and the successful party will always have costs of his success unless the court has good reason to

order otherwise. The words “the event” mean the result of the entire litigation. The result of the entire litigation herein is that the suit has been overtaken by events by virtue of the Defendant completing the registration, which was the Plaintiff’s cause of action. The Plaintiff is not disinherited of the title of successful party merely because the suit was not opposed or it that met no or little resistance. In any event, both parties agreed that the sole issue left for determination is the question of costs. It is immaterial that the lease contained an arbitration clause. Section 27 of the Civil Procedure Act is instructive, and it provides as follows: -

“27. Costs

(1) 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.

(2)The court or judge may give interest on costs at any rate not exceeding fourteen per cent per annum, and such interest shall be added to the costs and shall be recoverable as such."

5.In the foregoing, the Plaintiff is hereby awarded costs of this suit together with interest thereon at court rates from the date of filing of suit until payment in full. The registry shall mark this file as closed."

- iii) Having proffered its reasoning in the matter, it is not open to the court to revisit its decision and set it aside unless there is an error on the face of the record or discovery of new and important matter of evidence;*
- iv) The only ground relied on is error on the face of record, and, in view of the holding of the court that submissions are not mandatory in all circumstances and that the court can do without them, the applicant has not established any error on the face of the record.*

- v) *Without any error on the face of the record or discovery of any new or important matter of evidence within the meaning of Order 45 Rule 1 of the Civil Procedure Rule, this court would in effect lack jurisdiction to revisit the ruling, and if it did so, it would be sitting on appeal on its own decision which is not allowed by law.*
8. The upshot is that the application dated **18/7/2025** lacks merit and is hereby dismissed with costs.

Dated, signed and delivered at Malindi on this 11th February 2026.

A rectangular box containing a handwritten signature in blue ink, which appears to read 'Mwangi Njoroge'.

MWANGI NJOROGE
JUDGE, ELC MALINDI.