



Ngegwa & another v Company (Environment and Land Case 418 of 2017) [2026] KEELC 558 (KLR) (5 February 2026) (Ruling)

Neutral citation: [2026] KEELC 558 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE 418 OF 2017
MN KULLOW, J
FEBRUARY 5, 2026**

BETWEEN

FRANCIS KIRIRU NGEWA 1ST APPLICANT

CYRUS IKAKHU KIRIRU 2ND APPLICANT

AND

EMBAKASI RANCHING COMPANY RESPONDENT

RULING

1. The application that is before the court is the one dated 23rd May, 2023 where the applicant seeks the following orders
 - a. That costs of this suit be awarded to the plaintiff; to be taxed as such as there is no agreement as contemplated via the order of Hon Angote J dated 16th December 2021.
 - b. Costs of the application
2. The application was premised on the grounds as in the supporting affidavit of one Isaac Aloo where he deponed that the plaintiff had been the successful party after entering into a consent judgement. That the parties have been unable to agree on the issue of costs hence this application.
3. The respondent did not put in any response hence the application is undefended.
4. The court directed the application to be canvassed by way of written submissions however the applicant has not filed any submissions

Analysis and determination

5. Having looked at the application, the only issue for determination is whether the applicant is entitled to costs.



6. Where a suit is compromised, it does not mean that there is a successful or losing party. The discretion of the court is therefore called in to determine the issue of costs. Where however, a party is successful, as Section 27 of the *Civil Procedure Act* provides, the costs shall follow the event. Where also a defendant succeeds in the dismissal of the plaintiff suit the same principle applies.
7. When all factors are considered in these cases, the plaintiffs would not have instituted the suits had it not been for the actions of the 1st defendant.
8. In Civil case No. 179 of 2013 Morgan Air Cargo Limited Vs. Everest Enterprises Limited, a partial judgment was recorded by consent by the parties. The costs however became an issue. Gikonyo J said in part as follows,

The consent filed herein did not compromise on costs as that item was left out of the compromise and was to be agreed at a later date. It is the failure to agree on costs that parties ask the court to make a determination on the issue.”

9. It is generally accepted that a successful party cannot be deprived of his costs. However, intervening circumstance may deny him such an order. The award of costs is a matter of the discretion of the court, and should not be considered as a matter of course. Gikonyo J in the case cited above said as follows,

The exercise of the discretion, however, depends on the circumstances of each case. Therefore, the law in designing the legal phrase that “costs follow the event” was driven by the fact that there could be no “one-size-fit-all” situation on the matter. That is why section 27 (1) of the *Civil Procedure Act* is couched the way it appears in the statute; and even all literally works and judicial decisions on costs have recognised this fact and were guided by and decided on the facts of the case respectively. Needless to state, circumstances differ from case to case.”

10. Of necessary note, the successful claim herein is not one which does not attract costs or is incapable of attracting costs. The consent filed herein did not compromise on costs as that item was left out of the compromise and was to be agreed at a later date. It is the failure to agree on costs that parties asked the court to make a determination on the issue. There is also no attrition of any conduct which would prevent the Plaintiff from being awarded costs. In this case, I do not find any material on which an estoppel would arise in this matter. Further illumination on this position is in the decision of the court in ORIX OIL (KENYA) LIMITED v PAUL KABEU & 2 OTHER [2014] eKLR where the court stated:

“...the court should have been guided by the law that costs follow the event, and the Plaintiff 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 Plaintiff, which I do.

11. In the instant case it may well be argued, and rightly so, that the plaintiffs succeeded in the suit. I say so because orders sought after in the plaintiff were actualized when the suit was compromised.
12. For that reason, I find, the plaintiffs are entitled to costs.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 5TH DAY OF FEBRUARY 2026.



MOHAMMED N. KULLOW

JUDGE

Ruling delivered in the presence of: -

No appearance for the Applicants

No appearance for the Respondent

Philomena W. Court Assistant

