



Ndungu & 2 others (Suing as the Chairman, Secretary and Treasurer Representatives of Ambassador of Christ Church) v Kisorio (Environmental and Land Originating Summons E010 of 2022) [2026] KEELC 1235 (KLR) (26 February 2026) (Ruling)

Neutral citation: [2026] KEELC 1235 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAHURURU
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E010 OF 2022
LN MBUGUA, J
FEBRUARY 26, 2026**

BETWEEN

JOHN MATHENGE NDUNGU, MARGARET WAMUHU NGACAKU & JULIA WANJIRU KABUI (SUING AS THE CHAIRMAN, SECRETARY AND TREASURER REPRESENTATIVES OF AMBASSADOR OF CHRIST CHURCH) APPLICANT

AND

JOSPHAT KIPKEMBOI KISORIO RESPONDENT

RULING

1. This suit was withdrawn on 29.7.2025, of which the defendant sought for costs. The parties were directed to file submissions on costs which this court has duly considered.
2. The provisions of Section 27 (1) of the *Civil Procedure Act* stipulate 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;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”.



3. In the Supreme Court of Kenya case of Baridi Felix Mbevo vs. Musee Mati & 2 others [2021] eKLR, it was stated that;

“It is trite that we have an inherent jurisdiction to make orders on costs. In the Jasbir Singh Rai case at paragraph 11, This court established that costs fall under the inherent powers of the court

Further the exercise of this jurisdiction is an issue of judicial discretion which must be exercised judicially and in accordance with reason and justice.”

4. In the case at hand the court takes into account that the defendant did file an application to set aside the exparte judgment, thereafter, he embarked on defending the suit through a replying affidavit and the pre-trial exercise was conducted on two occasions. This far, I am inclined to find that the defendant deserves some costs. However, it is noted that the suit was still withdrawn at an early stage. In the circumstances, the defendant is awarded half costs of the suit.

DATED, SIGNED AND DELIVERED AT NYAHURURU THIS 26TH DAY OF FEBRUARY 2026 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:

Gakenia Gacheru holding brief for Waichungo for Applicant.

Maina Kairu for Respondent

Nancy Mwangi – Court Assistant

