



THE JUDICIARY



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANG'A
ELCLA E014 OF 2023

JOHN KIMANI GITHAIGAAPPELLANT/APPLICANT
VERSUS

CHRISTOPHER GITHIKA KANYUIRA.....RESPONDENT

(Being an Appeal from Decree delivered by the Hon. S. Mwangi (S.R.M) on the 23rd day of August 2023, in the Chief Magistrate's Court at Murang'a in M.C.E.L.C Case No. E069 of 2022)

RULING

- (1) This ruling is on the notice of motion dated 15-8-2025. The motion which is by the Appellant is brought under **Order 45 rule 1 (1) (a) of the Civil Procedure Rules, Sections 1A (1) 1B (1) (a), 3, 3A and 99 of the Civil Procedure Act, Article 159 (a), (b), (c), (d) and (e) of the Constitution of Kenya and all other enabling provisions of the law.**
- (2) The motion seeks four (4) orders.
- (a) That this court be pleased to review and interpret its judgment and decree or order which was pronounced on 24-1-2024.**
 - (b) That upon review and interpretation, this court do find that the Respondent is the one who is supposed to bear the costs of the counterclaim dated 17-8-2022.**
 - (c) That upon grant of prayers (a) and (b) above, this court do proceed to direct the lower court to proceed and assess the Appellant's bill of costs dated 18-12-2024.**
 - (d) That this court be pleased to make such other interlocutory orders as may appear to the court to be just and convenient in order to prevent the ends of justice from being defeated.**
- (3) The motion is based on five (5) grounds and is supported by an affidavit sworn by the Appellant dated 15-8-2025. The essence of the grounds and the affidavit is as follows. Firstly, the Appellant filed his bill of costs dated 18-12-2024 for assessment by the trial court. Secondly,

the trial court declined to assess the costs on the grounds that it was unable to understand from the judgment which party is supposed to pay the costs of the counterclaim dated 17-8-2022. Thirdly, the trial court directed the Appellant to file an Application before this Court for interpretation of this Court's judgment dated 24-10-2024. Finally, the judgment is clear on which party is to bear the costs of the counterclaim.

(4)The motion though served is unopposed.

(5)I have carefully considered the motion in its entirety including the grounds, the supporting affidavit and the judgment dated 24-10-2024. I find that in the judgment dated 24-10-2024, the learned Judge has said twice that the costs of the counterclaim are awarded to the Appellant. At paragraph 69 of the judgment the last sentence reads as follows.

“ Therefore, the court proceeds to upset and set aside the finding and holding of the trial court, and proceeds to dismiss the Respondent’s (Defendant before the trial court) Counter claim dated 17-8-2022 with costs to the Appellant herein.

Again at paragraph 72, the last sentence reads as follows.

“Therefore, the court directs that each party to bear its own costs of this appeal, save that the Respondent (Defendant) counterclaim dated 17-8-2022 is dismissed with costs to the Appellant (Plaintiff).

There is no doubt or ambiguity as to who gets the costs of the counterclaim which is dismissed. The costs go to the Appellant who is John Kimani Githaiga.

(6) Consequently and for the reasons already given, I **allow** the motion dated 15-8-2025 in terms of prayers **(a), (b) and (c)** .

Costs to the Appellant.

It is so ordered.

Dated, Signed and Delivered virtually at Murang’a this 14th day of April, 2026.

**M.N. GICHERU
JUDGE.**

Delivered online in the presence of; -
Court Assistant – Jackline
Appellant’s Counsel – Mr Onderi
Respondent’s Counsel – Absent