



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MERU

CIVIL SUIT NO 101 OF 2010

**SUSAN KATHMBI (SUING AS LEGAL REPRESENTATIVE OF THE
ESTATE OF SILAS KINOTI M'RINGERA S/O IKWINGA.....PLAINTIFF**

VERSUS

RINGERA S/O IKWINGA.....1ST DEFENDANT

GEDION MURIUKI.....2ND DEFENDANT

R U L I N G

1. On 29:09:17 Mr. Gichuki appearing for Plaintiff addressed the Court as follows:-

“This matter is coming up for mention. I have instructions to mark this case as settled with no order as to costs”

2. Murango for Defendant responded thus:-

“We have no objection but we are asking for costs”.

3. The Court then gave directions as follows:-

“This matter be and is hereby marked as withdrawn. However, the parties to file and serve their respective submissions on the issue of costs to be determined by the Court...”

4. Submissions have been filed and exchanged. I will therefore proceed to determine the issue of costs.

5. Plaintiffs’ have submitted that there is no successful party in the present suit as the settlement was meant to pursue amicable settlement in good faith. Plaintiff has made reference to a quote in Justice Kuloba’s Judicial Hints on Civil Procedure that **“the effect of ordering a party to pay costs is to reimburse the successful party the amounts expounded on the case. It must not be made as a penal measure...”** costs are means by which a successful litigant is recouped for expenses which he has been put in fighting an action”.

6. Defence on the other hand avers that it is the Plaintiff who dragged the defendant to court and that the matter has been in court for 7 years.

7. Section 27(1) of the Civil Procedure Act provides that:-

“The courts of any action, cause or other matter or issue shall follow the event unless the Court or Judge shall for good reason otherwise order”.

8. This is a case whereby the parties are close relatives. The Plaintiff is a daughter in law of the Defendant. The case has been marked as settled but the terms of the settlement have not been revealed to this Court. Ordinarily in such a scenario I would be inclined to order that each party do bear their own costs.

9. However, in this case I have perused the record and found that the matter has been in Court for a record 7 years!...” During the lifespan of the suit, the Plaintiff filed numerous applications dated ; 06:08:10, 07:10:10, 22:10:10, 14:11:11, 07:01:13, (dismissed on 06:05:13) and that of 10:06:15 (dismissed on 23:03:16).

10. Although I did not see the litigants in this case, it is submitted that Defendant is very old. He is the father in law of the plaintiff. I find that Plaintiff has dealt with the defendant in a rather merciless way, filing one application after another against defendant for the last seven years. She does not deserve mercy when it comes to costs.

11. Plaintiff is therefore condemned to pay costs of the suit.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS DAY OF 25th JANUARY, 2018 IN THE PRESENCE OF:-

Court Assistant: Janet/Galgalo

Nyakwara H/B for Murango Mwenda for Defendant present

No appearance for plaintiff

HON. L. N. MBUGUA

ELC JUDGE