



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

HC JR 67 OF 2009

ABRAHAM MUTHEE M'ETHAIBA.....APPLICANT

VERSUS

DIRECTOR OF LAND

ADJUDICATION AND SETTLEMENT.....1ST RESPONDENT

DISTRICT LAND ADJUDICATION

OFFICER MERU NORTH.....2ND RESPONDENT

GEOFFREY K. IGWETA MWATHI....1ST INTERESTED PARTY

JUSTUS GITUMA MBOROKI.....2ND INTERESTED PARTY

RULING

1. Vide the court's ruling of 2.11.2017, this suit was dismissed. Exparte applicant then filed an application dated 27.11.2017 to have the orders of 2.11.2017 reviewed. On 17.4.2018, the said application was withdrawn. However, interested party prayed for costs inquiring that the application was served and hence the interested party incurred expenses in filing and serving a replying affidavit.

2. On behalf of the exparte applicant, it has been argued that under section 27 of the Civil Procedure rules, "**costs follow events**". The exparte applicant has posed the question "what is the event? Is it a win or a compromise? Exparte applicant has cited the case of JR no 69 2014 RV Rosemary Wairimu Munene where it was held that although costs follow events the awarding of such costs should not be used to penalize the losing party.

3. Section 27 of Civil Procedure Code provides 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; 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. 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**".

4. In the present cases, the suit was dismissed vide a ruling of 2.11.2017 exparte applicants then filed on applications seeking to have a review of the orders of 2.11.2017. That application was served and that is why the Interested Party filed a replying affidavit dated 10.1.2018.

5. The court's records indicate that after the application was filed on 5.12.2017, the matter came up before this court on 6.12.2017, then on 14.12.2017 and on 17.4.2018. In all these instances, the court was giving directions on how the application would be determined. In particular on 14.12.2017, directions were given by the court for parties to file submissions within a limited period. It is clear that the application was active and hence the interested party must have incurred expenses in preparation to have the same prosecuted.

6. In the circumstances I find that these are no good reasons as to why applicant should not pay the costs.

7. The applicant is therefore condemned to pay costs of the application dated 27.11.2017 filed on 5.12.2017.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS DAY OF 25th APRIL, 2018

IN THE PRESENCE OF:-

Court Assistant: Janet/Galgalo

Waigwa for exparte applicant present

Mbaabu Calpeters for interested party present

B. Kimathi for respondents present

HON. LUCY. N. MBUGUA

ELC JUDGE