



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MERU**

**ELC PETITION NO. 37 OF 2011**

**DAVID MUNGIRIA MWANGO ..... PETITIONER**

**VERSUS**

**DISTRICT ADJUDICATION & DEMERCATION**

**OFFICERS TIGANIA WEST ..... 1<sup>ST</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**ROSE MWENDWA MUGAMBI ..... 3<sup>RD</sup> RESPONDENT**

**ISAIAH IGWATHU ..... 4<sup>TH</sup> RESPONDENT**

**MWONGERA WILLIAM ..... 5<sup>TH</sup> RESPONDENT**

**ELIAS MWENDA M'MINYORI ..... 6<sup>TH</sup> RESPONDENT**

**RULING**

1. This case was withdrawn on 16.5.2018. However, the parties did not agree on costs and the court directed that parties file submissions on issue of costs.
2. The submissions of the petitioner are that though this suit was filed in 2011, the prosecution of the case never took off because some parties died. It is also averred that the suit was withdrawn because the subject matter had changed in form and hence this cannot be interpreted as a win for any side. The petitioners proffered the case of **J.R No. 6 of 2014 – Republic vs Rosemary Wairimu Munene** in advancing the argument that the court has unfettered discretion not to condemn the petitioner in terms of costs.
3. On the side of the respondents, it is averred that when the suit was filed, petitioner did not take any steps to prosecute the same and that at some point the court had even threatened to dismiss the case. Respondents aver that their advocate has made various court attendances and hence they deserve costs.
4. Section 27 of the civil procedure Act 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.....: 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”.***
5. I have perused the file in order to discern the nature and extent of petitioner’s effort to prosecute the case. Though the suit was filed on 7.6.2011, nothing happened for two years until 3.7.2013 when case was mentioned. The matter was thereafter again mentioned after a duration of another two years in 2015 and this is when the court issued a threat to dismiss the suit. The threat was repeated on 23.11.2016.
6. It is the petitioner who dragged the respondents to this court where the case marked time for seven or so years until the subject matter apparently changed form. Blame hence lies on the part of the petitioners.
7. I therefore direct the petitioners to pay costs of this suit to the Respondents.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 18<sup>TH</sup> DAY OF JULY, 2018 IN THE PRESENCE OF:-**

**Court Assistant:** Janet/Galgalo

Ondari for petitioner

Ogoti holding brief for Murango Mwenda for 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> respondents

**HON. LUCY. N. MBUGUA**

**ELC JUDGE**