

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAROK

ELC CAUSE NO. 319 OF 2017

OLOIRIEN GROUP RANCH.....APPLICANT

-VERSUS-

THE TRANS MARA WEST SUB-COUNTY

SURVEYOR & 3 OTHERS.....RESPONDENTS

RULING

The Applicant herein filed a Judicial Review Application for an order of Certiorari to quash the amendment effected by the respondents in the area index map in respect of Oloiren area alleging that the same was unilaterally amended. However, the said amendment was later unilaterally reversed by the respondents before the hearing of the Judicial Review Application subsequent to which the Judicial Review Application was withdrawn by the exparte Applicant.

It is on the above basis that the parties having by consent withdrawn the application that they could not agree on who is to bear the costs of the application. The exparte applicant argue that costs ordinarily follow the event and even though the respondent by amending the process they ought to pay the costs that was incurred in the application.

The respondent submitted that since they have reversed the decision and impugned the amendment they ought not to be condemned to pay costs.

I have read the submissions that were filed by counsel for the applicants and the respondents and I find that the award of costs in a matter is at the discretion of court as provided for under section 27 of the Civil Procedure Act. In the instant case I find that the respondents were acting in good faith when they reversed and impugned the amendment that they initially made and hence avoided the need to unnecessary litigate upon the issues that were complained about.

Further to the above the respondent and are public institution who are financed through the taxes that we all pay and I find that the award of costs to an applicant is outweighed by that of safeguarding the scarce resource used for the public good.

In view of the above and for the reasons stated above I order that each party shall bear its costs in respect of the application.

Orders accordingly.

DATED, SIGNED and DELIVERED in open court at NAROK on this 13th day of July, 2018.

MOHAMMED NOOR KULLOW

Judge

13/7/18

In the presence of:-

Mr Kimoni holding brief or O.M. Otieno for applicant

N/A for the respondents