



Kongoacheke Clan Community Based Organization (CBO Suing through Henry Mwenda) the Chairman v Ngera & another (Environment & Land Case E003 of 2023) [2024] KEELC 1107 (KLR) (28 February 2024) (Ruling)

Neutral citation: [2024] KEELC 1107 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND CASE E003 OF 2023
CK NZILI, J
FEBRUARY 28, 2024**

BETWEEN

KONGOACHEKE CLAN COMMUNITY BASED ORGANIZATION (CBO SUING THROUGH HENRY MWENDA) THE CHAIRMAN PLAINTIFF

AND

ANTHONY KIAMA NGERA 1ST DEFENDANT

NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY 2ND DEFENDANT

RULING

1. On September 28, 2023, Mr. Manasse Kariuki learned counsel appearing for the 1st defendant informed the court that his client was no longer interested in the project. Parties, therefore, sought 14 days to finalize a consent and settle the matter. Counsels were given up to November 3, 2023 when the court was informed that parties were unable to reach a settlement or agreement. The matter was mentioned on November 15, 2023. Mr. Gichunge advocate for the plaintiff, told the court that as previously indicated on September 28, 2023 they had no objection to the withdrawal of the suit so long as costs were paid to the plaintiff.
2. Mr. Ng'ang'a, learned counsel for the 1st defendant, informed the court that his client was not willing to pay any costs. Parties, therefore, opted to file written submissions for the court to make a determination. The 1st defendant relied on written submissions dated November 27, 2023, whereas none were filed by either the plaintiff or the 2nd defendant. The 1st defendant submitted the dispute before the court that the plaintiff had been involved in the conduct of the Environmental Impact Assessment (EIA) for the intended setting up of a mortuary funeral home, morgue, or incinerator in their locality. They sought an injunction against the setting up of the project and revocation of any issued EIA license to the 1st defendant by the 2nd defendant.



3. The 1st defendant filed a defense dated June 20, 2023 stating that he only intended to set up an incinerator on the suit land and not a mortuary, funeral home, or morgue and that the EIA license was yet to be issued to him as the application was under consideration by the 2nd defendant.
4. The 1st defendant submitted that at the pre-trial stage, he had made it clear of his intention to withdraw the project on the suit land, and therefore, the suit was spent. As to costs, costs follow the event, the 1st defendant submitted the court has discretion and among the factors to consider are the conduct of the parties, subject matter, circumstances to the institution of the suit, events leading to termination manner of termination the relationship of the parties, need to promote reconciliation and the public interest.
5. To this end, the 1st defendant submitted that he and the plaintiff were neighbors, owning land in the same locality. He submitted that it was a public interest litigation in pursuit of public good and not an individual interest and that the suit was being terminated at an early stage.
6. Therefore, the 1st defendant submitted that each party should bear their costs to promote reconciliation and good neighborliness since he had abandoned the project at an early stage, for his neighbors did not welcome the project.
7. Further, the 1st defendant submitted that he made the proposal at the earliest stage possible which should be encouraged and not discouraged by the court penalizing him with costs. Reliance was placed on *Haraf Traders Ltd v Narok County Government* [2022] eKLR and *Okoti & 2 others v AG & others* [2023] KESC 31, (KLR) (21st April 2023) Ruling.
8. The plaintiffs moved the court by a plaint dated February 7, 2023. The same was accompanied by an application dated February 7, 2023. The 1st defendant opposed the application by a replying affidavit dated 6.3.2023. At the same time, the 1st defendant filed a preliminary objection and a statement of defense dated March 6, 2023 and June 20, 2023, respectively.
9. By a ruling dated May 10, 2023, the court dismissed the preliminary objection and issued interim orders of injunction against construction of any structures by the 1st defendant on L.R No's. Ntima/Ntakira/7534, 7404 and 7405 to last for one year.
10. Parties were directed to comply with Order 11 of the *Civil Procedure Rules*, which they did on July 17, 2022 and September 28, 2023, respectively. It was when the matter came up for fixing a hearing date on July 28, 2023, that the 1st defendant raised the issue of the abandonment of the project.
11. There is no formal withdrawal notice which has been filed with the court. No notice to abandon the claim has been filed under Order 25 of the *Civil Procedure Rules* by any of the parties. No consent has also been filed by the parties settling the matter save for the issue of costs. It is not for this court to dictate to parties what to do with their matters. The plaintiff is enjoying interim orders against the 1st defendant.
12. If the 1st defendant has agreed with the plaintiff as neighbors that he abandons the project for the good and welfare of the neighborhood, there is a way to fashion a settlement. None is available for me to endorse and perhaps determine on the aspect of costs. I cannot jump the gun and determine whether or not costs should follow event if there is no consent to mark the suit as withdrawn, abandoned, or compromised.
13. In the circumstances, I find no basis to pronounce myself on Section 27 of the *Civil Procedure Act*. Parties are directed to file any notice of withdrawal or settlement within 14 days from the date hereof, in default of which the suit shall stand dismissed for non-prosecution.



Orders accordingly.

**DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU
ON THIS 28th DAY OF FEBRUARY 2024**

In presence of

C.A Kananu

Kariuki for 1st defendant

Mugo for the plaintiff

HON. CK NZILI

JUDGE

