



**Ododa & another (Suing as the Administrators of Lt. Co. Richard Ododa Anyolloh - Deceased) v Muchina & 4 others (Environment & Land Case 272 of 2022) [2024] KEELC 945 (KLR) (27 February 2024) (Ruling)**

Neutral citation: [2024] KEELC 945 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 272 OF 2022  
MD MWANGI, J  
FEBRUARY 27, 2024**

**BETWEEN**

**MILDRED ANYANGO ODODA ..... 1<sup>ST</sup> PLAINTIFF  
LT. COL. GEORGINA ATIENO ODODA ..... 2<sup>ND</sup> PLAINTIFF  
SUING AS THE ADMINISTRATORS OF LT. CO. RICHARD ODODA  
ANYOLLOH - DECEASED**

**AND**

**BENARD NGANGA MUCHINA ..... 1<sup>ST</sup> DEFENDANT  
JOSEPH MAINA WANGARI ..... 2<sup>ND</sup> DEFENDANT  
EZEKIEL NJUNGE CHIRA ..... 3<sup>RD</sup> DEFENDANT  
CHIEF LAND REGISTRAR ..... 4<sup>TH</sup> DEFENDANT  
THE ATTORNEY GENERAL ..... 5<sup>TH</sup> DEFENDANT**

**RULING**

1. On 26<sup>th</sup> October, 2023, the parties in this matter through their Advocates recorded a consent which was adopted as a judgment of the Court. In the said consent, the parties agreed that the Certificate of lease issued on 4<sup>th</sup> June, 2021 together with any and all entries made in the register relating to L.R. No. Nairobi/Block 118/649 in favour of or in reference to the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants and or any other person claiming through or under them be and is hereby cancelled.
2. On the issue of costs of the suit, the parties left the issue to be determined by the Court.



3. Upon recording and adopting the consent as a judgment of this Court, the Court directed parties to file written submissions on the issue of costs only. Both parties complied and the Court has had an opportunity to read through the submissions.

### **Analysis and Determination**

4. Both sides, from the reading of their submissions, agree on the applicable principles in a determination of this nature i.e. on whether or not to award costs.
5. Section 27 of the [Civil Procedure Act](#) which is the substantive law on costs provides that costs shall follow the event. The section 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 give all the necessary directions for the purposes aforesaid; and the fact that the court has no jurisdiction to try the suit shall be no bar to 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 reasons otherwise direct.”

6. In the case of [DMG v EWG](#) [2021] eKLR, the court held that:

“While exercising its discretion as provided under Section 27, the court is among other issues called upon to look at the following factors:

- a. The subject of the suit;
- b. Circumstances that led to the institution of the suit;
- c. Events which constituted the termination;
- d. The stage at which they were terminated; and
- e. the relationship between the parties and the need for reconciliation amongst the parties.

7. In the case of *Republic v Rosemary Wairimu Munene, Ex parte Applicant v Ibururu Dairy Farmers Co-operative Society Ltd*, Judicial Review Application No. 6 of 2014, the court stated that:

“The issue of costs is the discretion of the Court as provided under the above section (Section 27 of the [Civil Procedure Act](#)). The basic rule on attribution of costs is that costs follow the event. It is well recognized that the principle that costs follow the event is to be used for compensating the successful party for the trouble taken in prosecuting or defending the case.”

8. The ‘trouble taken in prosecuting or defending the suit’, as stated in the case of [Haraf Traders Ltd v Narok County Government](#) [2023], eKLR, refers to:

“... the various lawful and legitimate steps taken by the parties in the case in pursuit of remedy.”



9. Costs are at the discretion of the court, yet, follow the event. See the *Halsbury's Laws of England*; 4<sup>th</sup> Edition (Re-issue), [2010], Vol.10. Para 16, which states that;

“The court has discretion as to whether costs are payable by one party to another, the amount of those costs, and when they are to be paid. Where costs are in the discretion of the court, a party has no right to costs unless and until the court awards them to him, and the court has an absolute and unfettered discretion to award or not to award them. This discretion must be exercised judicially; it must not be exercised arbitrarily but in accordance with reason and justice” (Emphasis added).

10. Justice (Retired) Kuloba in *Judicial Hints on Civil Procedure*, 2<sup>nd</sup> Edition, (Nairobi) Law Africa) 2011’, at Page 94 states that: -

“Costs are {awarded at} the unfettered discretion of the court, subject to such conditions and limitations as may be prescribed and to the provisions of any law for the time being in force, but they must follow the event unless the court has good reason to order otherwise...”

11. From the foregoing, and the legion of authorities on the issue, the exercise of discretion on costs depends on the specific facts of each case, and is guided by the principle that costs should follow the event unless the court otherwise directs. considerations that are relevant for consideration include;

- i. the conduct of the parties,
- ii. the subject of litigation,
- iii. the circumstances which led to the institution of the proceedings,
- iv. the events which eventually led to their termination,
- v. the stage at which the proceedings were terminated,
- vi. the manner in which they were terminated,
- vii. the relationship between the parties and,
- viii. the need to promote reconciliation amongst the disputing parties pursuant to Article 159 (2) (c) of the *Constitution*;
- ix. public interest.

12. In the instant suit, the 1<sup>st</sup>-3<sup>rd</sup> Defendants submit that in spite of them having obtained a judgment in their favour in the Magistrate’s Court in regard to the suit property, the subject matter of this suit, they, after considering the status of the 1<sup>st</sup> Plaintiff as a widow, conceded to her case and opted for an amicable settlement. They urge the court not to award any costs against them in the circumstances.

13. I note that the 1<sup>st</sup> – 3<sup>rd</sup> Defendants had raised a Preliminary Objection to the Plaintiffs’ suit herein which they abandoned and instead agreed to a settlement of the dispute. That is laudable and is a positive step towards reconciliation of the parties.

14. However, having in mind the stage at which the case was terminated, the Court will award what it considers nominal costs; a sum of Kshs. 50,000/= which I consider sufficient and appropriate in the circumstances of this case to be paid to the Plaintiffs by the 1<sup>st</sup>-3<sup>rd</sup> Defendants. The said costs shall be paid within 30 days from the date of this ruling.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 27<sup>TH</sup> DAY OF FEBRUARY, 2024.**



**M. D. MWANGI**

**JUDGE**

In the virtual presence of:

Mr. Oluoch for the Plaintiffs

No appearance for the Defendants

Court Assistant: Yvette

**M. D. MWANGI**

**JUDGE**

