



Kamau & another (Suing as the legal representatives of the Estate of David Kamau Njoroge - Deceased) v Ali & another; Kamau (Interested Party) (Environment and Land Case Civil Suit 447 of 2018) [2024] KEELC 1799 (KLR) (21 March 2024) (Ruling)

Neutral citation: [2024] KEELC 1799 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE CIVIL SUIT 447 OF 2018
J OMANGE, J
MARCH 21, 2024**

BETWEEN

SAMUEL NDUNG’U KAMAU 1ST PLAINTIFF

GRACE WAIRIMU KAMAU 2ND PLAINTIFF

**SUING AS THE LEGAL REPRESENTATIVES OF THE ESTATE OF DAVID
KAMAU NJOROGE - DECEASED**

AND

IBRAHIM MOHAMED ALI 1ST DEFENDANT

YUSUF ADAN MAALIM 2ND DEFENDANT

AND

ERNERST GICHERU KAMAU INTERESTED PARTY

RULING

1. By Notice of Withdrawal dated 5th January 2024 expressed to be brought under Order 25 Rule 1 of the [Civil Procedure Rules](#) 2010, the Plaintiffs gave notice in the suit as follows:

“Take Notice that the plaintiffs have wholly withdrawn the suit on the grounds that we do not wish to pursue the suit any further against the Defendants.”



2. The Defendant asked for costs which is the only issue that is before the court for determination. Costs of a suit or other proceedings are at the discretion of the Court in terms of section 27 of the Civil Procedure Act, which provides as follows:

“27. Costs 1) 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.”

3. It is a settled principle of costs that costs follow the event unless there is good reason not to award costs. A successful party will ordinarily be awarded costs unless the Court for sufficient reason orders otherwise. Factors that a court will consider in exercising this discretion include the length of time a suit or proceedings have been ongoing, the stage of hearing, the need to promote access to justice by indigent litigants and any other sufficient reasons.

4. The Plaintiffs’ suit herein was filed in the year 2018 by way a plaint seeking among other reliefs “(a) An order restraining the Defendants from doing any acts of construction on the suit property (b) General damages for breach of lease of agreement (c) costs of the suit. The Defendants filed a statement of defence to the amended plaint dated 21st August 2023, witness statement and list of documents dated the same day through its Counsel Auka Edwin and Associates. After the close of the Plaintiffs case, the plaintiff filed Notice of Intention to Act in Person on the 3rd January 2024. On 5th January 2024, a week before the date fixed for the hearing of the defendant’s case the Plaintiffs filed a Notice of Withdrawal of Suit, the subject of this ruling on costs.

5. I find that there are no good grounds to justify departure from the general rule that costs shall follow the event. As such the Plaintiffs are allowed to withdraw the suit with costs to the Defendant.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 21ST DAY OF MARCH 2024.

JUDY OMANGE

JUDGE

In the presence of: -

Mr. Juma for Plaintiffs

No appearance by the Defendants

Steve - Court Assistant

