



REPUBLIC OF KENYA



KENYA LAW
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Boss v Registered Trustees Serve in Love Africa (SILA) Trust & others (Environment & Land Case 193 of 2017) [2025] KEELC 220 (KLR) (30 January 2025) (Ruling)

Neutral citation: [2025] KEELC 220 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE 193 OF 2017**

**EO OBAGA, J
JANUARY 30, 2025**

BETWEEN

ALBERT BOSS PLAINTIFF

AND

**THE REGISTERED TRUSTEES SERVE IN LOVE AFRICA (SILA) TRUST &
OTHERS DEFENDANT**

RULING

1. The Plaintiff and the 1st Defendant entered into a sale agreement for purchase of LR No. Kipsinende/ Kipsinende Block 3 (Mosop 'A') 61 at a consideration of Kshs.9,300,000/=. The Plaintiff paid a sum of Kshs.5,000,000/= upon execution of the agreement.
2. The agreement was however frustrated as there was a dispute as to who were the trustees of the 1st Defendant. On 14th February, 2017 the Plaintiff and the 2nd, 3rd and 4th Defendants who were trustees of the 1st Defendant signed a deed of rescission of the agreement and settlement. The Plaintiff was given post dated cheques in settlement of the amount he had paid. All the cheques were returned unpaid.
3. On 8th May, 2017, the Plaintiff filed a suit for recovery of Kshs.5,000,000/=. The 1st Defendant filed a defence on 8th June, 2017. The 2nd, 3rd and 4th Defendants filed their defence on 12th September, 2017. On 26th February, 2018, counsel for the 2nd, 3rd and 4th Defendants indicated to court that this was a matter whereby parties were likely to settle. There was however no immediate settlement. The Plaintiff recovered Kshs.1,400,000 on a date which he did not disclose. In July, 2013 the Defendants paid him Kshs.2,000,000/=.
4. As at the time the Plaintiff testified on 8th November, 2023, he had been paid a total of Kshs.3,400,000/ =. There was an outstanding balance of Kshs.1,600,000. The Plaintiff closed his case on 8th November, 2023. The defence was given a date for defence hearing. The counsel for the Defendants indicated tha there was a possibility of settling the matter. On 18th September, 2024 the counsel for the parties



indicated to court that the Plaintiff had been paid the remaining balance. They were however unable to agree on costs and interest.

5. The parties then left the issue of costs and interest to be determined by the court. Parties agreed to file written submissions on the issue of costs. The Plaintiff submitted that he is entitled to costs and interest as he was made to file a suit which has been pending in court for over seven years. He submitted that he has spent money and time in court and that he should have costs.
6. The Plaintiff relied on the case of *Haraf Traders Limited v Narok County Government* (2019) eKLR where Justice Gikonyo referred to a passage in *Judicial Hints on Civil Procedure* 2nd Edition (Nairobi Law Africa) 2011 page 94 by Justice Kuloba where it was stated as follows:-

“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.....”

7. The Plaintiff further submitted that for a court to depart from the Principle that costs follow the event, there have to be good reasons for departure from that Principle. The Plaintiff relied on the case of *Jasbir Singh Rai & Others v Tarochan Rai & Others* (2014) eKLR where the supreme Court stated as follows:-

“In the classic common law style, the courts have to proceed on a case by case basis, to identify “good reasons” for such a departure. An examination of evolving practices on this question shows that, as an example, matters in the domain of public interest litigation tend to be exempted from award of costs.....”

8. The court further stated as follows:-

“As stated above in cases whereby the parties enter into a consent, the court does not go further to inquire the reasons for the consent or dig into the reasons why the Plaintiff seeks to resolve the matter with the Defendant, nor can an adverse inference be made against the Plaintiff while determining costs. The only relevant issue is whether or not the Plaintiff is entitled to costs given the event of the suit in light of lawful steps taken in pursuit of remedy.”

9. On the issue of interest the Plaintiff relied on the case of *Madison Insurance Company Limited v Mung'ot* (Civil Appeal 215 of 2020 (2022) KEHC (KLR) (ar) (14th July, 2022) (Judgement) where it was stated as follows:-

Section 26 (1) of the *Civil Procedure Act* is explicit that; “where and in so far as decree is for payment of money, the court may, in the decree, order interest at such rate, as the court deems reasonable to be paid on the principal sum adjudged on sum principal sum of any period before the institution of the suit, with further interest as sum rate as the court deems reasonable on the aggregate so adjudged from the date of the decree to the date of payment or to such earlier date as the court thinks fit.”

10. The Defendants submitted that the issue of costs is at the discretion of the court and that in the circumstances of this case, the court should order that each party bears their own costs. They submitted that the agreement was frustrated by third parties. The Defendant referred to Eldoret High Court Petition No. 18 of 2017 where the High Court ruled that Ambrose Kiprop, David Chemworem, Moses Kipngetuny Kipkulei, Samson Kibii and Erick Kiptum Teimuge unlawfully and fraudulently obtained registration as trustees of the 1st Defendant.



11. I have considered the submissions by the parties. From the authorities cited, there is no doubt that costs follow the event and that where a Judge or Judicial officer departs from this principle, there have to be good reasons for doing so. In the instant case, there is no doubt that the agreement was frustrated because of the feud as to who were the trustees of the 1st Defendant. The issue was however resolved on 22nd October, 2019.
12. Even before the resolution of who were trustees of the 1st Defendant, the 2nd, 3rd and 4th Defendants had committed to refund the amount paid by the Plaintiff. This however did not materialize and the Plaintiff was forced to file a suit. He testified and close his case on 8th November, 2023. It is only on 18th September, 2024 that the Defendants indicated to court that they had fully settled the principal sum.
13. There are no good reasons as to why I should depart from the principle that costs follow the event. I therefore find that the Plaintiff is entitled to costs.
14. On the issue of interest, I notice that the Defendants remained with the Plaintiff's money from 19th January, 2017. He recovered Kshs.1,400,000/= on a date which he did not disclose. The Defendants paid him Kshs.2,000,000/= in July, 2023. The balance was paid in 2024 on dates which were not disclosed. In view of the circumstances of this case and given the fact that the agreement was frustrated by third parties, I will not condemn the Defendants to pay interest. I therefore direct that the Plaintiff shall only have costs of the suit.

It is so orderd.

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HON. E. O. OBAGA

JUDGE

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MAKUENI THIS 30TH DAY OF JANUARY, 2025.

In the absence of parties who were aware of the date of delivery of ruling.

