



County Government of Kakamega v Vaghela & another (Environment & Land Case E034 of 2022) [2024] KEELC 1430 (KLR) (14 March 2024) (Ruling)

Neutral citation: [2024] KEELC 1430 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT & LAND CASE E034 OF 2022**

DO OHUNGO, J

MARCH 14, 2024

BETWEEN

COUNTY GOVERNMENT OF KAKAMEGA PLAINTIFF

AND

HARVATSINH MANGALSINH VAGHELA 1ST DEFENDANT

JITENDRAKUN VERBAMANGALSINH VAGHELA 2ND DEFENDANT

RULING

1. The Plaintiff filed this suit on May 13, 2022, seeking judgment against the Defendants for an order that the lease in respect of land title number Kakamega/Municipality/Block I/655 be forfeited on account of non-development. The Defendants entered appearance on 31st May 2022 and filed Defence and compliance documents on June 21, 2022. They also filed a further list of documents on January 17, 2023.
2. The suit was later withdrawn by consent on May 9, 2023. The Plaintiff prayed that there be no order as to costs of the suit while the Defendants sought to be awarded costs. Since the parties could not agree on the issue of costs, directions were given that parties file submissions on that issue.
3. The Plaintiff cited the cases of *Jasbir Singh Rai & 3 others v Tarlochan Singh Rai & 4 others* [2014] eKLR and *Haraf Traders Limited v Narok County Government* [2022] eKLR and argued that circumstances that led to the withdrawal of the suit was that the Defendants hurriedly developed the suit property during pendency of the proceedings. That it withdrew the suit in good faith at the pretrial stage thereby saving both the court's and the Defendants' time. It further argued that any costs awarded would have to be paid out of public funds and that it would thus be in public interest that costs not be awarded. Relying on the case of *Amoni Thomas Amfry & another v Minister for Lands & another & Mohamed Swazuri & 8 others* [2013] eKLR, the Plaintiff urged the court to exercise discretion in its favour by ordering that each party bears own costs.



4. On their part, the Defendants cited section 27 of the *Civil Procedure Act* and argued that costs follow the event, that this court can only deny them costs for good reason and that no good reason exists in the present case. Relying on their bundle of documents, they contended that they obtained a letter dated 6th July 2021 through which approval for their development of the suit property was granted. That by the time this suit was filed in May 2022, the suit property was already developed with the knowledge and approval of the Plaintiff. They relied on the cases of *Cecilia Karuru Ngayu v Barclays Bank of Kenya & another* [2016] eKLR and *David Kiptum Korir v Kenya Commercial Bank & another* [2021] eKLR and argued that the discretion to award costs must be exercised judiciously and that they are entitled to costs in the circumstances of this case.

5. I have considered the parties' respective submissions. The sole issue for determination is whether the Defendants should be awarded costs of this suit.

6. The starting point is section 27 (1) of the *Civil Procedure Act* which provides:

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.

7. Thus, the court has discretion to award costs. Costs should ordinarily be awarded to the successful party, unless good reasons are advanced to warrant depriving such a party of costs. The Defendants herein are the successful parties since the claim against them was withdrawn.

8. The parties herein have submitted on the circumstances that led to their withdrawal. They have gone as far as citing their trial bundles. It must be noted that the trial bundles are at this point not evidence since they were not produced and subjected to scrutiny through oral testimony. They are thus of little aid to this court. There is no basis upon which to conclude that the suit was withdrawn because the Defendants developed the suit property to defeat the suit.

9. Regarding the Plaintiff's argument that it would not be in public interest to costs be awarded to the Defendants since such costs would have to be paid out of public funds, I note that the Plaintiff is a litigant like any other. The litigation herein is an ordinary civil suit and not public interest litigation. No good reasons have been advanced to warrant depriving the Defendants of costs.

10. In the result, the Defendants are awarded costs of this suit.

DATED, SIGNED, AND DELIVERED AT KAKAMEGA THIS 14TH DAY OF MARCH 2024.

D. O. OHUNGO

JUDGE

Delivered in open court in the presence of:

Mr Wabuko holding brief for Ms Mmbaka for the Plaintiff

Mr Mwebi for the Defendants

Court Assistant: M Ngayayi

