



**Sikembei (Suing as Next of Kin of Joshua Sikembei Parteyie) & 2 others v Ranch & 2 others
(Environment & Land Case E077 of 2021) [2025] KEELC 842 (KLR) (27 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 842 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE E077 OF 2021
LC KOMINGOI, J
FEBRUARY 27, 2025**

BETWEEN

**ISAAC SOLITEI SIKEMBEI (SUING AS NEXT OF KIN OF JOSHUA SIKEMBEI
PARTEYIE) 1ST APPLICANT**

JOSHUA LEKUNIN OLE YIAMBATI 2ND APPLICANT

EMKAY ESTATE LIMITED 3RD APPLICANT

AND

ROMBO GROUP RANCH 1ST DEFENDANT

JOHN SITELU NKIMPAPAI 2ND DEFENDANT

THE DISTRICT LAND REGISTRAR, KAJIADO 3RD DEFENDANT

RULING

1. Before Court for determination is the issue of costs for the suit. This suit was commenced through a Plaintiff and was moved to this Court because of its relation with ELC Appeal E027 of 2022 which was before this Court. When the matter came up of mention on 9th March 2023, Counsel for the 1st and 2nd Defendants informed Court that the Land Registrar had given his determination which the 1st and 2nd Defendants had filed an Appeal against and sought that the file should be closed.
2. Counsel for the Plaintiffs contested the closure of the file on grounds that there was an issue of costs which was yet to be determined.
3. By consent, parties agreed to canvass the issue by way of written submissions.



The Plaintiffs Submissions

4. Counsel for the Plaintiffs submitted that the 1st and 2nd Defendants filed their statement of defence dated 11th June 2024, claiming that the suit had been filed prematurely. They therefore outlined the issues for determination as whether the matter was filed prematurely and who should bear costs of the suit.
5. On whether the matter had been filed prematurely, Counsel submitted that prior to filing of this suit, they had approached the 3rd Defendant in May 2021 to determine the boundary dispute unsuccessfully. And that the Boundary determination was only made when they were served with these pleadings. Counsel also submitted that the 1st Defendant's surveyor trespassed on the Plaintiffs land placed beacons and its members started grazing their animals on the Plaintiffs land. Therefore, there was an issue of trespass which was part of the Plaintiff's prayers and thus within the Court's jurisdiction as was held in *Menkar Limited vs Ratilal Ghela Samat Shah & 2 others* (2019) eKLR and *Kisumu Yacht Club registered Trustees vs County Government of Kisumu & another* [2021] eKLR.
6. On who should bear costs, while making reference to Section 27 of the *Civil Procedure Act* and the case of *Party of Independent candidates of Kenya vs Mutula Kilonzo & 2 others* where the Court held that costs should be awarded to the successful party, Counsel submitted that the actions of the 1st and 2nd Defendants prompted the Plaintiffs to get a private surveyor. They thus incurred costs of Kshs. 600,000 for the surveyor's service as well as costs for filing this suit. Therefore, the 1st and 2nd Defendants should bear costs for general damages, special damages as well as costs of the suit.

The 1st and 2nd Defendants' Submissions

7. Counsel submitted that after this suit was filed, they filed a Preliminary Objection on grounds that the suit was defective as it offended Section 18(2) of the *Land Registration Act*. Before the objection was heard and determined, the 3rd Defendant delivered its report and the preliminary objection was abandoned for being overtaken by events. Therefore, the Plaintiffs should be denied costs because the dispute which was a boundary dispute was substantively resolved by the Land Registrar's report

Analysis and Determination

8. I have considered the rival submissions. The single issue for determination is:
 - i. Who should bear costs of the suit?
9. The award of costs in civil litigation in Kenya is governed by Section 27(1) of the *Civil Procedure Act* provides that:
 - (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.



10. From this proviso, it is clear that the award of costs, must be exercised judiciously, and the general principle is that costs should follow the event as held by the Court of Appeal in *Supermarine Handling Services Ltd v Kenya Revenue Authority* [2010] eKLR:

“... 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. See Section 27 (1) of the *Civil Procedure Act*.

In the case *Devram Dattan v Dawda* [1949] EACA 35 it was held,

“It is well established that when the decision of such a matter as the right of a successful litigant to recover his costs is left to the discretion of the Judge who tried his case, that discretion is a judicial discretion, and if it be so its exercise must be based on facts...”

11. Whereas this suit had an aspect of a boundary dispute which was determined by the 3rd Defendant and the 1st and 2nd defendants’ appealed against, it is on record that had the dispute emanated from their actions. I find that the Plaintiffs were the successful party in this suit. They are therefore entitled to recover the costs incurred in the litigation unless there exist special reasons to depart from this principle. This court has found no reason.

12. The upshot is that, the costs of this suit and the surveyor’s fees to be borne by the 1st and 2nd Defendants.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 27TH FEBRUARY 2025.

L.KOMINGOI

JUDGE.

In the presence of:

Ms. Wanjiku for the Plaintiffs.

Mr. Taliti for the 1st and 2nd Defendants.

N/A for the 3rd Defendant.

Court Assistant – Mutisya.

