



**Macharia v Mundia & another (Environment and Land Appeal
12 of 2023) [2024] KEELC 3830 (KLR) (29 April 2024) (Ruling)**

Neutral citation: [2024] KEELC 3830 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NANYUKI
ENVIRONMENT AND LAND APPEAL 12 OF 2023**

AK BOR, J

APRIL 29, 2024

BETWEEN

JOSEPH KIEMO MACHARIA APPELLANT

AND

MARY MUTHONI MUNDIA 1ST RESPONDENT

AGNES MUTHONI MUNDIA 2ND RESPONDENT

RULING

1. The Appellant withdrew the appeal vide the notice dated 10/11/2023, which indicated that the Appellant was withdrawing the appeal in its entirety with no orders as to cost. The 2nd Respondent, who sought to be paid costs on the withdrawal of the appeal conceded that the court had not given directions for the hearing of the appeal.
2. The court directed parties to file submissions on the issue of costs following the withdrawal of the appeal. The 2nd Respondent relied on Section 27 of the *Civil Procedure Act* giving the court discretion to award costs and determine by whom the costs are to be paid. The 2nd Respondent maintained that costs are meant to compensate the successful party for the trouble they took in prosecuting or defending a case. She urged the court to award her costs.
3. On her part, the Appellant submitted that the appeal was withdrawn before the filing of the record of appeal and before directions were given on the hearing of the appeal. The Appellant contended that although costs follow the event, no event had happened in this instance to justify an award for costs.
4. The issue for consideration is whether the court should award the 2nd Respondent costs. The court had not given directions on the hearing of the appeal and all that had happened is that parties attended court for mention for purposes of the court giving directions on the hearing of the appeal.



5. In the court's view minimal costs for court attendance to be assessed by the Deputy Registrar would suffice as costs to the 2nd Respondent based on the fact that the appeal was withdrawn before directions on its hearing were given by the court.

DELIVERED VIRTUALLY AT NYAHURURU THIS 29TH OF APRIL 2024.

K. BOR

JUDGE

In the presence of: -

Mr. William Bwonwong'a for the 1st Respondent

No appearance for the Appellant

