



**The African Brotherhood Church (Suing Through its Trustees Namely,
Timothy Nzyoki Ndambuki, Philip Mutua Katiku & Richard Maingi Kaliku)
v Orbit Chemical Industries Limited & 6 others (Environment and Land
Petition E016 of 2023) [2024] KEELC 3424 (KLR) (23 April 2024) (Ruling)**

Neutral citation: [2024] KEELC 3424 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND PETITION E016 OF 2023**

**MD MWANGI, J
APRIL 23, 2024**

BETWEEN

**THE AFRICAN BROTHERHOOD CHURCH (SUING THROUGH ITS
TRUSTEES NAMELY, TIMOTHY NZYOKI NDAMBUKI, PHILIP MUTUA
KATIKU & RICHARD MAINGI KALIKU) PETITIONER**

AND

**ORBIT CHEMICAL INDUSTRIES LIMITED 1ST RESPONDENT
OLOOSAYETI ENGINEERING LIMITED 2ND RESPONDENT
JOHN NJUGUNA CHEGE 3RD RESPONDENT
NAIROBI CITY COUNTY 4TH RESPONDENT
THE REGISTRAR OF TITLES, NAIROBI 5TH RESPONDENT
THE NATIONAL LAND COMMISSION 6TH RESPONDENT
REPUBLIC OF KENYA 7TH RESPONDENT**

RULING

1. On 21st February, 2024, the Advocate for the Petitioner in this matter communicated to the Court that the Petitioner had filed a Notice of Withdrawal of the Petition dated 14th February, 2024 seeking to withdraw the Petition in its entirety. He therefore prayed that the matter be marked as withdrawn with no orders as to costs.



2. The Advocate for the 1st, 2nd and 3rd Respondents while not opposed to the withdrawal sought to be awarded costs. The 6th Respondent while not opposed to the withdrawal too sought costs. The 4th, 5th and 7th Respondents had no objection to the withdrawal with no orders as to costs.
3. The Court allowed the Withdrawal of the Petition and directed the parties who had sought costs to file submissions on the issue of costs only. From the court record, only the 1st, 2nd & 3rd Respondents filed submissions.
4. In their submissions, the 1st, 2nd and 3rd Respondents submit that they are entitled to instruction fees having defended the suit. They rely on the case of *Republic v. Municipal Council of Busia & another* [2013] eKLR, where the court held that;

“.... (since) the *Ex Parte* Applicant was in fact instructed by the Respondents to act in the various cases that were the subject of taxation..... (and) since instructions were not disputed, then it follows that the *Ex Parte* Applicant is entitled to be paid his fees.”

5. Section 27 of the *Civil Procedure Act* makes provisions for the award of costs. The Section provides that:

“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 exercise of those powers.

Provided that costs of any action, cause or other matter or issue shall follow the event unless the Court or Judge shall for good reasons otherwise direct.”

6. In the case of *DMG v. EWG* (2021) eKLR, the Court while interpreting the provisions of Section 27 (above) held that in exercising its jurisdiction;

“The Court is among other issues called upon to look at the following factors:

- a. The subject of the suit;
- b. Circumstances that led to the institution of the suit;
- c. Events which Constituted the termination;
- d. The stage at which they were terminated; and
- e. The relationship between the parties and the need for reconciliation amongst the parties.”

7. The Supreme Court of Kenya in the Case of *Tasbir Singh Rai & others – v- Tarlochan Rai and others* (2014) eKLR, while upholding the discretion of the Court on the issue of costs held that the general rule is that costs shall follow the event, however;

“In the Common Law Style, Courts have to proceed on a case by case basis, to identify good reasons for such a departure (from the general rule).”



8. In this case, the Petitioner withdrew its case before directions on the hearing of the Petition had been given. I would say without doubt, that the Petition was withdrawn at its preliminary stages even before pleadings had closed.
9. The stage at which proceedings are terminated is one of the key considerations that a Court should have in mind in deciding whether or not to award costs.
10. In this case, considering stage at which proceedings were terminated, I don't consider it fit and just to award costs to any of the Respondents. The most appropriate order, considering the overall circumstances of this case is that each party bears its costs. That is the order that I make in this matter. Therefore, the Petition herein is marked as withdrawn with no orders as to costs.

It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 23RD DAY OF APRIL, 2024.

M.D. MWANGI

JUDGE

In the virtual presence of:

No appearance by the Parties.

Court Assistant: Yvette

