



**Katu v Masaku & another (Environment and Land Appeal  
E013 of 2021) [2024] KEELC 4605 (KLR) (12 June 2024) (Ruling)**

Neutral citation: [2024] KEELC 4605 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI  
ENVIRONMENT AND LAND APPEAL E013 OF 2021**

**TW MURIGI, J**

**JUNE 12, 2024**

**BETWEEN**

**MULUE MUASYA KATU ..... APPELLANT**

**AND**

**KIMENYE MASAKU ..... 1<sup>ST</sup> RESPONDENT**

**WAMBUA KIMENYE ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. This matter came up for directions on 7<sup>th</sup> March, 2024, when Ms Kellen Learned Counsel for the Appellant informed the Court that they had filed a Notice of withdrawal of Appeal dated 26<sup>th</sup> October, 2023.
2. Ms Kyalo, Learned Counsel for the 2<sup>nd</sup> Respondent had no objection to the Appeal being withdrawn subject to payment of costs.
3. Ms Kellen argued that the 2<sup>nd</sup> Respondent is not entitled to costs for the reason that the appeal had not taken off. Counsel contended that the 2<sup>nd</sup> Respondent had been awarded costs in the application dated 21<sup>st</sup> November, 2021.
4. The record shows that the Appellant filed a Memorandum of Appeal dated 3<sup>rd</sup> November 2021 through the firm of Muumbi and Co. Advocates. On 26<sup>th</sup> October 2023, the Appellant filed a Notice of Withdrawal of Appeal through the firm of Muumbi & Co. Advocates.
5. I have carefully perused the record and I note that the Appeal has not been admitted in accordance with Section 79B of the [Civil Procedure Act](#). In the circumstances, it is the finding of this court that



Respondent is not entitled to costs. In so finding, I am persuaded by the holding in the case of *Muli Mutiso vs Mbiti Ndolo & Another*, HCCA 120/2003 (Mks) where the court held that:

“without admission of an appeal and service thereon there is yet no role for the Respondent save perhaps in an interlocutory application say for stay of execution pending appeal. Costs in such a case would be limited to those interlocutory matters and not the Appeal per se. If a Respondent enters the Appeal, fixes it for mention for an unclear purpose and then the Memorandum of Appeal is withdrawn, he cannot claim costs. I say so because as yet he has no role to play in it. The matter is for the judge and the Appellant who can take action on it without the Respondent.”

6. The upshot of the foregoing is that the Appeal herein is withdrawn with no orders as to costs.

.....  
**HON. T. MURIGI**

**JUDGE**

**RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 12<sup>TH</sup> DAY OF JUNE, 2024.**

In the presence of:

Ms. Kyalo of the 2<sup>nd</sup> Respondent.

Court Assistant Kwemboi

