



Ukulima Co-operative Savings & Credit Ltd v Populite International Limited (Environment & Land Case 1023 of 2014 & 305 of 2015 (Consolidated)) [2023] KEELC 512 (KLR) (26 January 2023) (Ruling)

Neutral citation: [2023] KEELC 512 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 1023 OF 2014 & 305 OF 2015 (CONSOLIDATED)
LN MBUGUA, J
JANUARY 26, 2023

BETWEEN

UKULIMA CO-OPERATIVE SAVINGS & CREDIT LTD PLAINTIFF

AND

POPULITE INTERNATIONAL LIMITED DEFENDANT

RULING

1. Judgement in this matter was delivered way back on February 2, 22022. Thereafter, Njuguna and partners, the advocates for the defendant filed an application dated March 3, 2022 claiming that they had represented the defendants up to the time of delivery of the judgment. However, the said law firm learnt that their client was giving instructions to the law firm of Midega & Co advocates to frustrate recovery of their fees. The applicant (law firm) sought orders interalia that all payments due from the plaintiff to the defendant arising from the judgment he deposited with them or in court.
2. When the application came up for hearing on May 19, 2022, the applicant withdrew the same and prayed that there be no orders as to costs. Plaintiffs side had no objection to this prayer. However, the firm of Midenga advocates while raising no objection to the prayer for withdrawal of the application stated that they were asking for costs as they had been served and they had filed a replying affidavit sworn on March 26 March, 2022.
3. Thus this ruling relates to costs of the application.
4. In the case of *Baridi Felix Mbevo v Musee Mati & 2 others* [2021] eKLR, it was stated that: “ the ultimate factor on an award or non award of costs is the judicial discretion.”
5. The firm of Midenga & co advocates claim that they filed a replying affidavit after they were served, hence they should get costs. However, I have gone through the digital file in the Courts Tracking System (CTS) and I have not seen such a document. Further, there is no evidence to indicate that



Midenga & Co are properly on record in this matter as per the dictates of order 9 rule 9 of the [Civil Procedure Rules](#). I have also taken into consideration that the application was withdrawn speedily after it was filed. In that regard, I direct that each party shall bear their own costs in respect of the application dated March 3, 2022. It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 26TH DAY OF JANUARY, 2023
THROUGH MICROSOFT TEAMS.**

LUCY N. MBUGUA

JUDGE

In the presence of:-

Githiiri holding brief for Njuguna for Applicant

Midega for Respondent

Court Assistant: Eddel

