



**Kingdom Bank Limited v Willowpark Limited & 5 others; Kibebo & 13 others (Interested Parties) (Commercial Case E008 of 2023) [2024] KEHC 3154 (KLR) (25 January 2024) (Ruling)**

Neutral citation: [2024] KEHC 3154 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
COMMERCIAL CASE E008 OF 2023  
DO CHEPKWONY, J  
JANUARY 25, 2024**

**BETWEEN**

**KINGDOM BANK LIMITED ..... PLAINTIFF**

**AND**

**WILLOWPARK LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**PETER MBIYU KOINANGE ..... 2<sup>ND</sup> DEFENDANT**

**GEOFFREY MBUGUA KAMAU ..... 3<sup>RD</sup> DEFENDANT**

**PATRICK KINYANJUI NJUGUNA ..... 4<sup>TH</sup> DEFENDANT**

**JANE WAMBUI KOINANGE ..... 5<sup>TH</sup> DEFENDANT**

**MARY NJOKI KARUGA ..... 6<sup>TH</sup> DEFENDANT**

**AND**

**RUTH KIBEBO ..... INTERESTED PARTY**

**LAWRENCE NJOROGE ..... INTERESTED PARTY**

**JULIUS KABANGI ..... INTERESTED PARTY**

**ALBERT WACHIRA ..... INTERESTED PARTY**

**GEORGE NYUTU ..... INTERESTED PARTY**

**WAMBUA KIVINDYO ..... INTERESTED PARTY**

**ANZELIMO ..... INTERESTED PARTY**

**FRIEDRICK ..... INTERESTED PARTY**

**NORMAN ..... INTERESTED PARTY**

**ROBERT ..... INTERESTED PARTY**



**MARGARET WARIGIA ..... INTERESTED PARTY**  
**NGARI ..... INTERESTED PARTY**  
**MRS MAHIANI ..... INTERESTED PARTY**  
**WANJIKU ..... INTERESTED PARTY**

## **RULING**

1. The Plaintiff/Applicant moved the court through Notice of Motion application and Plaint, both dated 25<sup>th</sup> May, 2023 seeking injunctive reliefs against any interference over a property known as Title Number Kiambaa/ Thimbigua/7186 among others.
2. The Defendants/Respondents entered appearance and filed a Defence as well as Replying Affidavit which was sworn by Peter Mbiyu Koinange as a Director of the 1<sup>st</sup> Defendant on his own behalf and that of the other Defendants/Respondents on 2<sup>nd</sup> October, 2023 and 3<sup>rd</sup> October, 2023 respectively.
3. The 1<sup>st</sup> to 10<sup>th</sup>, 12<sup>th</sup> and 14<sup>th</sup> Interested Parties entered appearance and filed a Replying Affidavit which was sworn by Ruth N. Kibebo on 9<sup>th</sup> June, 2023.
4. Upon considering the application, the court issued directions on how the same was to be disposed of. The Plaintiff/Applicant then filed a Notice of Withdrawal dated 15<sup>th</sup> November, 2023 seeking to withdraw the suit entirely with no orders as to costs.
5. The Defendants filed their Submissions dated 16<sup>th</sup> December, 2023 in which they indicated that they had no objection to the withdrawal of the suit but urged the court to award them costs of the suit. By this, the Defendants have relied on section 27 of the [Civil Procedure Act](#) and state that costs should follow the event. They also hold that each of the Defendants retained their advocate who filed documents and attended court on several occasions and therefore they should not suffer costs occasioned by an incompetent suit.
6. Although M/S Kibebo for the Interested Parties indicated that they had filed submissions dated 17<sup>th</sup> December, 2023, the same are not on record. However, she orally indicated that she resonates with the submits of the Defendants' counsel on the issue at hand.

### **Analysis and Determination.**

7. The law on costs is enshrined under the provisions of Section 27 of the [Civil Procedure Act](#) which provides as follows:-

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- (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 give all the necessary directions for the purposes aforesaid; and the fact



that the court 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 direct.”

8. It is therefore trite law that the purpose of awarding costs is not to punish the losing party but to compensate the successful party for the trouble of prosecution or defending a case. This was the position in the case of *Republic –vs- Rosemary Wairimu Munene, ex-parte Applicant –vs- Ibururu Dairy Farmers Co-operative Society Ltd* [2014] eKLR, where the court held as follows:-

“The issue of costs is the discretion of the court as provided under the above section. The basic rule on attribution of costs is that costs follow the event..... It is well recognized that the principle costs follow the event is not to be used to penalize the losing party; rather it is for compensating the successful party for the trouble taken in prosecuting or defending the case”.

9. The court finds that the Plaintiff/Applicant having dragged the Defendants and the Interested Parties to court, they caused them to incur costs in retaining the Advocates who prepared their responses and attended court sessions on several occasions which should be compensated.
10. In the end the court, this suit is marked withdrawn but subject to costs being paid to the Defendants and Interested Parties by the Plaintiff.

It is so ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 25<sup>TH</sup> DAY OF JANUARY, 2024.**

**D. O. CHEPKWONY**

**JUDGE**

In the presence of:

M/S Odongo holding brief for M/S Kilima for the Plaintiff

Mr. Ashford for the Defendants/Respondents

M/S Kibebo for the Interest Parties

Court Assistant - Martin

