



Osuna & another v The Kenya National Highways Authority & 5 others; NHC Lang'ata Court Residents' Association (Interested Party) (Environment & Land Petition 14 of 2018) [2023] KEELC 15882 (KLR) (16 February 2023) (Ruling)

Neutral citation: [2023] KEELC 15882 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND PETITION 14 OF 2018
AA OMOLLO, J
FEBRUARY 16, 2023**

BETWEEN

SYMON KOLUOCH OSUNA 1ST PETITIONER

ELIZABETH ONYANGO ADHIAMBO 2ND PETITIONER

AND

THE NATIONAL LAND COMMISSION 1ST RESPONDENT

THE KENYA NATIONAL HIGHWAYS AUTHORITY 2ND RESPONDENT

**THE PRINCIPAL SECRETARY MINISTRY OF TRANSPORT,
INFRASTRUCTURE, HOUSING AND URBAN DEVELOPMENT ... 3RD
RESPONDENT**

THE NATIONAL HOUSING CORPORATION 4TH RESPONDENT

THE ATTORNEY GENERAL 5TH RESPONDENT

THE REGISTRAR OF TITLES 6TH RESPONDENT

AND

NHC LANG'ATA COURT RESIDENTS' ASSOCIATION .. INTERESTED PARTY

RULING

1. The petition was settled between the parties vide a consent letter dated July 19, 2022 and filed in this court after the terms of the letter was adopted as an order of the Court. Paragraph 6 of the order provided that the matter be marked as settled upon payment of the Petitioner's costs. The Respondents was opposed to the award of costs of the petition to the petitioners to file and serve upon the petitioners their written submissions within 7 days of the filling of this consent.



2. Despite being given time to put in their submissions, the Respondents did not file any. The Petitioners filed their submissions dated November 14, 2022 emphasizing on the principle that costs follow the event as per Section 27 of the Civil Procedure Act. That the court in exercising its discretion to determine whether a party is deserving of costs, should bear in mind the various steps taken by the parties since the suit was filed noting that there is no valid reason to depart from the general rule. In support, the petitioner cited *inter alia* the case of Party of Independent Candidate of Kenya & another v Mutula Kilonzo & 2 others [2013] eKLR where the court stated thus;

“...It is clear from the authorities that the fundamental principle underlying the award of costs is two-fold. In the first place the award of costs is a matter in which the trial Judge is given discretion.But this is a judicial discretion and must be exercised upon grounds on which a reasonable man could come to the conclusion arrived at. In the second place the general rule that costs should be awarded to the successful party, a rule which should not be departed from without the exercise of good grounds for doing so...”
3. The Petitioners submitted they filed the petition on March 1, 2018 against the Respondents to challenge the 1st Respondent’s unilateral decision to revoke their title for LR Nairobi Block 106/986 at the instance of the 2nd Respondent. Pursuant to the consent dated July 19, 2022 adopted as an order of the court on July 20, 2022, the 1st Respondent rescinded its decision in favour of the petitioners.
4. The petitioners contended that they have incurred legal costs while protecting their interests. They cited the case of Biashara Sacco Society Ltd & 2 others v Dickson Miricho Kihagi [2016] eKLR where Mativo J held that a Court properly exercising its discretion on matters costs should consider; the conduct of the parties, the subject of litigation, the circumstances which led to the institution of the proceedings, the events which eventually led to the termination of the proceedings, the stage at which the proceedings were terminated, the manner in which the proceedings were terminated, the relationship between the parties and the need to promote reconciliation between the parties.
5. The issue for determination is whether the petitioner should be granted costs of the suit. The 3rd paragraph of the letter of consent stated that the Respondents were opposed to award costs. The parties thereto agreed that the Respondents were to address court through written submissions within 7 days of filing of the consent on why the costs should not be awarded to the petitioners. As it is now, there is nothing put forward why costs should not follow the events as set out in section 27 of the Civil Procedure Act.
6. The Petitioners incurred costs in engaging an advocate to represent them in this matter. This court would exercise its discretion differently only when reasons are provided and the Respondents have offered none. Consequently, the costs of the petition is awarded to the Petitioner to be paid jointly by the 1st and 2nd Respondents.

DATED AND DELIVERED AT NAIROBI THIS 16TH DAY OF FEBRUARY 2023

A. OMOLLO

JUDGE

Ruling delivered virtually in the presence of:

Wanira Maina holding brief for Tiego for Petition

Kamau for Attorney General

