



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MAKUENI**

**ELC CASE NO 48 OF 2019**

**ABEDNEGO KITHOME MWANZUI.....PLAINTIFF**

**VERSUS**

**JOSEPH KIMEU KINGOO.....1<sup>ST</sup> DEFENDANT**

**PETER MUSYOKA KINGOO.....2<sup>ND</sup> DEFENDANT**

**SCHOLASTICA KINGOO.....3<sup>RD</sup> DEFENDANT**

**FRANCIS MUSAU KINGOO.....4<sup>TH</sup> DEFENDANT**

**RULING**

1. The Plaintiff initiated this suit against the Defendants on the 8<sup>th</sup> of March 2017 and sought for the following orders: -

- a) **A mandatory injunction compelling the Defendants not to interfere with the quiet possession of the land owned by the Plaintiff.**
- b) **A declaration that the Plaintiff is a bona fide purchaser for value and thus his portion of the land should remain as it is as the distribution is carried on.**
- c) **A declaration by this Honourable court that the Plaintiff should not be evicted or moved from the part of the land which he has developed.**
- d) **An Order that once subdivision is done, the 1<sup>st</sup> Defendant will immediately transfer his part of the share of the Estate he sold to the Plaintiff.**
- e) **Interest on (a) and (b) above at bank rates.**
- f) **Costs of the suit.**
- g) **Any other relief that the court may deem fit and just to grant.**

2. This matter was listed on 2<sup>nd</sup> of March 2022 for notice to show cause why the suit should not be dismissed for want of prosecution. Ms Karanja learned Counsel for the Plaintiff informed this court that the Plaintiff instituted the present suit pursuant to a succession matter that had been filed in Machakos High Court. She further stated that the Plaintiff wanted to withdraw the suit since parties had agreed on the way forward in the succession matter before the Machakos Court. Ms. Mutemi learned Counsel for the 1<sup>st</sup> Defendant submitted that the Defendant was entitled to costs as the matter proceeded on an application and that they incurred

costs.

3. The issue for determination is whether the 1<sup>st</sup> Defendants is entitled to costs.
4. When this matter came for mention on the 2<sup>nd</sup> of March 2022, Counsel for the Plaintiff applied to withdraw the suit against the Defendants with no orders as to costs. Counsel for the 1<sup>st</sup> Defendant did not oppose the application to withdraw the suit subject to payment of their costs. The Plaintiffs contends that the 1<sup>st</sup> Defendant is not entitled to costs. The court allowed the application to the withdraw the suit and reserved the ruling on the issue of costs.
5. Section 27(1) of the Civil Procedure Act provides as follows;

*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 direction 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 reasons otherwise direct.*

6. A careful reading of Section 27 indicates that it is considered trite law that costs follow the event.
7. In **Cecilia Karuru Ngayu -Vs- Barclays Bank of Kenya & Another (2016) eKLR** the court held that;

*“In determining the issue of costs, the court is entitled to look at inter alia(i) the conduct of the parties, (ii) the subject of litigation, (iii) the circumstances that led to the institution of the proceedings, (iv) the events which eventually led to the termination, (v) the stage at which the proceedings were terminated, (vi) the manner in which they were terminated, (vii) the relationship between the parties and (viii) the need to promote reconciliation amongst the disputing parties pursuant to Article 159(2) of the constitution.”*

8. Upon perusal of the court record, I note that the 1<sup>st</sup> Defendant did not enter appearance or file a Statement of Defence. Having failed to participate in the proceedings herein, I find that the 1<sup>ST</sup> Defendant is not entitled to any costs.
9. The upshot of the foregoing is that I find that the application by the 1<sup>st</sup> Defendant is devoid of merit and the same is dismissed.

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**HON. T. MURIGI**

**JUDGE**

**RULING SIGNED, DATED AND DELIVERED VIA MICROSOFT TEAMS THIS 27<sup>TH</sup> DAY OF APRIL 2022.**

**IN THE PRESENCE OF: -**

Court Assistant – Mr. Mohammed.

Ms. Karanja for Plaintiff.

Ms. Mutemi for Defendant.



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