

KENYA / JUDGMENT

Kinyua v Mosoti [2026] KEELC 5473 (KLR)

[2026] KEELC 5473 (KLR)**COURT**

Environment and Land Court

BEFORE

CK Nzili

CASE / FILE NUMBER

Environment and Land Case E158 of 2022

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Kinyua v Mosoti (Environment and Land Case E158 of 2022) [2026] KEELC 5473 (KLR) (16 September 2026) (Ruling) Neutral citation:

[2026] KEELC 5473 (KLR) Republic of Kenya In the Environment and Land Court at Nairobi Environment and Land Case E158 of 2022 CK Nzili, J September 16, 2026 Between Faith Makena Kinyua Plaintiff and Omwando Eric Mosoti Defendant

Ruling

1. The general rule in law is that costs follow the event. It is only where there are valid or exceptional circumstances that a successful party can be denied costs of the suit. The Plaintiff instituted this suit by way of a Complaint dated 22.4.2022 alongside a Notice of Motion application of even date seeking injunctive relief. The Court rendered its ruling on 18.4.2023, striking out the application for being procedurally defective. In the said ruling, the Court further granted the Plaintiff leave to file a proper application for a temporary injunction. 2. The plaintiff then filed an amended complaint dated 24th May 2023 seeking reliefs including: a. An order for sale of Plot No. 4 situated on LR No. Nairobi Block 118/45 and division of the proceeds of sale between the parties in the ratio of their contribution towards the purchase of the plot. b. In the alternative to prayer (a), refund of the Plaintiff's share of contribution at the current market value of the Plot. c. Cost of the suit d. Interest on a, b and c from the date of filing the suit to the date of payment 3. Pursuant to those directions, the Plaintiff further filed a fresh Notice of Motion dated 24.5.2023 seeking injunctive orders. When the matter came up for mention on 2.11.2023, the Court referred the dispute to Court-Annexed Mediation. On 27.3.2024, the parties informed the Court that the mediation process had been unsuccessful. Subsequently, on 3.6.2024, upon consultation between counsels for the respective parties, the Court recorded a consent in respect of the Plaintiff's application dated 24.5.2023 on the following terms: a. That an order maintaining the status quo be and is hereby issued pending the hearing and determination of the suit; b. The status quo was defined as follows: i. The Defendant shall retain physical possession of the suit property; ii. The Defendant shall not dispose of, transfer, charge, or otherwise alienate the suit property

during the pendency of the suit; and iii. The Defendant is restrained from undertaking any developments on the suit property pending the hearing and determination of the suit. c. The parties were directed to comply with the provisions of Order 11 of the Civil Procedure Rules within twenty-one (21) days. 4. The defendant subsequently filed a statement of defence and counterclaim dated 15.7.2024, where he prayed for the following reliefs: a. An order of Set-Off be and is hereby granted, to the effect that the Defendant relinquish his share of the property known as Plot No.271 situated on L.R. Number 343/3 (Mavoko Town), in favour of the Plaintiff as settlement for her contribution towards the suit property herein, Plot No.4 situated on L.R. Number Nairobi/Block 118/45. b. In the alternative, the property known as Plot No.271 situated on L.R. Number 343/3 (Mavoko Town) be subjected to valuation by both parties jointly, and placed for sale; where the full proceeds thereof shall be retained by the Plaintiff in satisfaction of her claim. c. The Plaintiff be and is hereby ordered to reimburse the Defendant his fair share of the property known as Plot No.271 situated on L.R. Number 343/3 (Mavoko Town) and in exchange the Defendant be ordered to reimburse the Plaintiff's contribution towards the suit property herein, Plot No.4 situated on L.R. Number Nairobi/Block 118/45 and the matter be marked as settled. d. Costs of this Counter-Claim be paid by the Plaintiff. 5. The defendant also prayed that the Amended Plaint dated 24.5 2023 be dismissed with costs. 6. Following several mentions to confirm compliance with the pre-trial directions, the parties eventually complied, whereupon the matter was fixed for hearing on 13.5. 2026. On the said date, the parties appeared before the Deputy Registrar, as the Honourable Lady Justice A. Omollo, who was handling the matter, had since been transferred. Thereafter, the matter was placed before this Court on 2.7.2026 for further directions. 7. When the matter came up before this Court on 2.7.2026, counsel for the Plaintiff confirmed that the parties had fully complied with the pre-trial requirements. The suit was consequently fixed for hearing on 22.7.2026. On the hearing date, counsel for the Plaintiff informed the Court that the parties had reached an amicable settlement. A consent dated 22.7.2026 was presented for adoption as the judgment of the Court. The terms are: a. That the defendant shall pay the Plaintiff a sum of Kshs. 929,600/- in full and final settlement of her contribution towards the purchase of the suit property, Plot No. 4, a subdivision of Land Reference Nairobi Block 118/45 b. That the sum of Kshs. 929,600/- shall be paid in six (6) equal monthly instalments of Kshs. 154,933.33/- wef the 30 th of September 2026 and thereafter on or before the 30 th or the end of every subsequent month until payment in full. The payment shall be made to the Plaintiff's account details; Bank: Equity Bank Account Number: 0950xxxxxxxxx Account Name: Faith Makena Kinyua Branch: Buruburu c. That in default of payment of any of the instalments, the Plaintiff be at liberty to execute against the Defendant. d. That upon payment in full of the sum of Kshs. 929,600/-, the Plaintiff shall execute a deed of Relinquishment and all other necessary instruments relinquishing all her right, title and interest in Plot No. 4 situated in Nairobi Block 118/45 in favour of the Defendant. e. That the Defendant hereby relinquishes any interest in Plot No. 271 situated in LR No. 343/3, Mavoko in favour of the Plaintiff herein. f. That the Defendant shall execute all such instruments and documents as may be necessary to give effect to the relinquishment of the Defendant's interest in Plot No. 271 situated in LR No. 343/3, Mavoko, in favour of the

Plaintiff. g. That this consent constitutes a substantive settlement of the Plaintiff's claim and the Defendant's counterclaim. 8. Counsel further indicated that the only outstanding issue requiring determination was that of costs. 9. On the issue of costs, counsel for the Plaintiff submitted that the Plaintiff was entitled to the same on the ground that the terms of the consent substantially allowed the Plaintiff's claim while effectively compromising the Defendant's counterclaim. Counsel further argued that the consent was reached approximately four years after the institution of the suit, during which period the Plaintiff had incurred considerable legal expenses. It was also submitted that the Plaintiff had been compelled to file two applications for injunctive relief, participate in Court-Annexed Mediation, and attend several court sessions, some of which were adjourned at the instance of the Defendant. 10. In response, counsel for the Defendant urged the Court to direct that each party bear its own costs. Counsel submitted that the parties were formerly spouses and had entered into the consent voluntarily and in good faith to amicably resolve the dispute. 11. In light of the foregoing, the only issue falling for determination is whether the Plaintiff is entitled to an award of costs. 12. Counsel for the Plaintiff submitted that the Plaintiff ought to be awarded costs on the basis that the consent recorded by the parties substantially achieved the reliefs sought in the Plaintiff's claim while effectively disposing of the Defendant's counterclaim. Counsel further argued that since the institution of the suit in April 2022, the Plaintiff has incurred considerable legal expenses in prosecuting the matter. It was submitted that the Plaintiff was constrained to file two interlocutory applications, participate in Court-Annexed Mediation, comply with the pre-trial requirements under Order 11 of the Civil Procedure Rules, and attend numerous court sessions before the matter was eventually resolved. Counsel also contended that several adjournments were occasioned by the Defendant. 13. In response, counsel for the Defendant urged the Court to direct that each party bears its own costs, contending that the dispute was amicably resolved through a consent freely entered into by the parties. 14. Section 27(1) of the Civil Procedure Act vests the Court with discretion to determine by whom and to what extent costs shall be paid. In *Jasbir Singh Rai & 3 Others v Tarlochan Singh Rai & 4 Others* [2014] eKLR, the Supreme Court held that while the award of costs remains a matter within the Court's discretion, the general rule is that costs follow the event and any departure from that principle must be justified by sound and sufficient reasons. 15. In *Morgan Air Cargo Limited v Everest Enterprises Limited* [2014] eKLR, the Court of Appeal affirmed that a successful litigant is ordinarily entitled to costs unless there exists good reason to deprive such party of that entitlement. 16. In *Halsbury's Laws of England; 4th Edition (Re-issue)*, [2010], Vol.10. Para 16 it is stated that: "The court has discretion as to whether costs are payable by one party to another, the amount of those costs, and when they are to be paid. Where costs are in the discretion of the court, a party has no right to costs unless and until the court awards them to him, and the court has an absolute and unfettered discretion to award or not to award them. This discretion must be exercised judicially; it must not be exercised arbitrarily but in accordance with reason and justice" 17. In *Kieleko v Ndung'u alias Margaret Wangari Ngugi & another* – [2025] KEHC 12666 (KLR), decided on 24 July 2025, the appeal was settled by consent, which was silent on costs. The appellant argued that she had successfully pursued

the appeal and incurred litigation expenses. The High Court held that although costs are discretionary, the discretion must be exercised judicially under section 27 of the Civil Procedure Act . The court awarded costs to the appellant, stating that where parties settle by consent and are silent on costs, the successful party may still be entitled to costs. 18. The court observed: “ It would be most unfair and unjust for a party to take another through elaborate litigation... and wish away compensation by way of costs, unless the parties otherwise state in their settlement.” See also *Republic v Music Copyright Society of Kenya Ltd & another; Oira & 3 others (Interested Parties); Wambeo (Ex Parte Applicant)* – [2025] KEHC 2423 (KLR), decided on 7 March 2025. 19. In *Judicial Hints on Civil Procedure*, 2nd Edition (Nairobi) Law Africa, 2011, page 94, Justice (Retired) Kuloba observes that: - “ Costs are awarded at the unfettered discretion of the court, subject to such conditions and limitations as may be prescribed and to the provisions of any law for the time being in force, but they must follow the event unless the court has good reason to order otherwise.” 20. “Good reasons” that justify departure from the general rule that ‘costs follow the event’ will vary from case to case. The court in *Rai & 3 others v. Rai & 4 others* supra observed that: “ There was no prescribed definition of any set of good reasons that can justify a court’s departure, in awarding costs, from the general rule, costs-follow-the-event. In the classic common law style, the courts have proceeded on a case-by-case basis to identify good reasons for such a departure. An examination of evolving practices on that question shows that, as an example, matters in the domain of public-interest litigation tend to be exempted from the award of costs.” 21. From the jurisprudence, the exercise of discretion on costs depends on the facts of each case, and is guided by the principle that costs should follow the event unless the court orders otherwise. Such circumstances as are relevant include: I. the conduct of the parties; II. the subject of litigation; III. the circumstances which led to the institution of the proceedings; IV. the events which eventually led to their 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)(c) of the Constitution ; IX. public interest. 22. In the instant case, the suit was compromised by way of a consent. However, the parties expressly left the issue of costs for determination by the Court. The settlement of a dispute through a consent does not, without more, disentitle a successful litigant to an award of costs. The Court is required to consider the overall outcome of the litigation and the circumstances under which the proceedings were concluded. 23. Upon considering the terms of the consent alongside the pleadings and the history of the proceedings, it is apparent that the Plaintiff was compelled to commence these proceedings and to prosecute the suit for over a period of approximately four years before the matter was finally resolved. 24. During that period, the Plaintiff incurred legal costs in filing interlocutory applications, participating in Court-Annexed Mediation, complying with pre-trial directions, and attending numerous mentions and court appearances. The court is not persuaded by the submissions of the Defendant, who has not demonstrated any sufficient cause to warrant a departure from the general rule that costs follow the event. Accordingly, this being a family matter where the best interests of children are paramount, I find and hold that the Plaintiff

is entitled to the costs of the suit. 25. Orders accordingly. DATED, SIGNED AND DELIVERED AT NAIROBI THIS 16TH DAY OF SEPTEMBER 2026. HON. JUSTICE C.K. NZILI JUDGE Delivered In the Presence of: Ms. Gathoni for plaintiff Ms. Wajohi for the defendant Court Assistant: Julius

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