



REPUBLIC OF KENYA



**Ombidi v Omollo (Environment & Land Case 32 of 2021)  
[2023] KEELC 16320 (KLR) (22 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 16320 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY  
ENVIRONMENT & LAND CASE 32 OF 2021  
GMA ONGONDO, J  
MARCH 22, 2023**

**BETWEEN**

**PAUL JUMA OMBIDI ..... APPLICANT**

**AND**

**BENARD ODHIAMBO OMOLLO ..... RESPONDENT**

**RULING**

1. On March 3, 2023, Nancy Nyarige and Company Advocates for the defendant, Benard Odhiambo Omollo lodged a notice of withdrawal of notice of appeal dated February 28, 2023 pursuant to rule 81 of the *Court of Appeal Rules, 2010*.
2. By the said notice, the defendant intends to wholly withdraw the notice of appeal dated November 25, 2022 duly filed herein for all purposes.
3. It is trite that the right of a party to withdraw a matter including the notice referred to in paragraph 2 herein above, cannot be taken away; see *Nicholas Kiptoo Korir Arap Salat v Independent Electoral and Boundaries Commission and 7 others* [2014] eKLR.
4. By dint of order 42 rule 6(4) of the *Civil Procedure Rules, 2010*, an appeal to the Court of Appeal is deemed to have been filed herein by the notice of appeal dated November 25, 2022 and referred to in paragraph 2 hereinabove.
5. This court is conscious of rule 81 (supra) under which the Notice had been given as well as rules 2 and 75 of the *Court of Appeal Rules 2010*.
6. In the circumstances, this court is devoid of jurisdiction over the notice of appeal. So, this court can't make one more step in this matter as I subscribe to the decision in the case of *Owners of Motor Vessel. "Lillian S" v Caltex Oil (Kenya) Limited* [1989] eKLR.
7. A fortiori, I decline to allow the withdrawal of the notice of appeal dated November 25, 2022.



8. It is so ordered.

**DELIVERED, DATED AND SIGNED THIS 22<sup>ND</sup> DAY OF MARCH 2023.**

**G.M.A ONG'ONDO**

**JUDGE**

**PRESENT:**

**1. Okello and Mutiva F, court assistants.**

