



REPUBLIC OF KENYA



KENYA LAW
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**Obiero v Moretti & another (Environment & Land Case E015 of 2022)
[2023] KEELC 20046 (KLR) (21 September 2023) (Ruling)**

Neutral citation: [2023] KEELC 20046 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E015 OF 2022
LN MBUGUA, J
SEPTEMBER 21, 2023**

BETWEEN

PIUS OYUYO OBIERO PLAINTIFF

AND

DIANELLA MORETTI 1ST DEFENDANT

**ADMINISTRATION OF THE ESTATE OF THE LATE LYDUSHKA HORNIK
PIOTTO 2ND DEFENDANT**

RULING

1. This suit was withdrawn on July 10, 2023 of which the defendants pray for costs, hence this ruling.
2. I have perused the record. The plaintiffs in their submissions dated July 24, 2023 aver that they withdrew the suit at the earliest opportunity in good faith. That it is the defendants who in fact filed an application to have the suit struck out.
3. I find that the firm of Kaplan & Strathon had filed the application dated August 23, 2022 averring that the plaintiff had filed a similar suit ELC 314/2016. The Notice to withdraw suit was filed 8 months later on April 28, 2023.
4. The law governing issues of costs is set out at Section 27 of the *Civil Procedure Act* which provides that costs follow events. Also see *Baridi Felisc Mbevovs Musee Mati & 2 others* [2021] eKLR.
5. The Notice to withdraw suit was not filed speedily and there was no justification in filing this suit when there existed another case ELC 314 of 2016.
6. However, I find that the firm of Nelson Harun apparently acting for one Roberto Sainagh only filed their memorandum of appearance on May 3, 2023 after the Notice of withdraw had been filed.



7. As such, I hereby proceed to award costs of the suit to the firm of Kaplan and Stratthon as against the plaintiff.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 21ST DAY OF SEPTEMBER, 2023
THROUGH MICROSOFT TEAMS.**

LUCY N. MBUGUA

JUDGE

