

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

MISC. CIVIL APPLICATION NO. 233 OF 2017

MWANIKI GITAHU & PARTNES ADVOCATES.....APPLICANT

VERSUS

JITEGEMEE CO-OPERATIVE

SAVINGS & CREDIT SOCIETY LIMITED.....RESPONDENT

R U L I N G

1. After substantially arguing his Chamber Summons dated 19/3/2018 Mr. Mwaniki sought to withdraw the said summons upon detecting some shortfalls with it.
2. The advocates for the client, Mr. Chamwada, opposed the application for withdrawal on the basis that they had responded to the same, filed papers, attended court and that it had been substantially argued.
3. This court proceeds from the learning that just as much as any litigant cannot be hindered from accessing the court system, none should be hindered from withdrawing a dispute once filed the only consideration being that on costs incurred by the other side.
4. The supreme court in *Nicholas Kiptoo Arap Korir Salat vs I.E.B.C & 3 Others* laid that position of law when it said:

“A party’s right to withdraw a matter before court cannot be taken away. A court cannot bar a party from withdrawing his matter”.

5. That being the position, I do allow the application to withdraw the chamber summons dated 19/3/2018 but noting that the matter had been opposed and therefore the respondent had incurred legal costs, I do order that the Advocate/Applicant shall pay the costs so far incurred by the client/respondent.

Dated and delivered at Mombasa this 24th day of October 2018.

P.J.O. OTIENO

JUDGE