



**Muthithi Investments Limited v Kioko (Environment & Land Petition
1 of 2019) [2023] KEELC 22329 (KLR) (14 December 2023) (Ruling)**

Neutral citation: [2023] KEELC 22329 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND PETITION 1 OF 2019
LN MBUGUA, J
DECEMBER 14, 2023**

BETWEEN

MUTHITHI INVESTMENTS LIMITED PETITIONER

AND

GIDEON MBUVI KIOKO RESPONDENT

RULING

1. This ruling relates to the objection raised by counsel for the Defendant in response to the Petitioner's Notice of withdrawal of suit dated 19.10.2023 brought pursuant to Rule 27 (1) (a) of the *Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules*, 2013.
2. In opposition, counsel for the Respondent argues that withdrawal of a petition is not an automatic procedure, that the Petitioner ought to file a proper Notice of Motion so as to get leave to discontinue proceedings. Thus a mere notice of withdrawal without leave of the court does not suffice. To this end, the case of *John Paul Arigi & Others v Board Kenya Ports Authority & 2 others* [2016] eKLR as well as the case of *Kiambu County Tenants Welfare Association v AG & another* [2017] eKLR were proffered.
3. In response, counsel for the Petitioner submits that the *Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules*, 2013 doesn't envisage filing of an application for withdrawal of suit as Rule 32 permits oral and formal applications for such a withdrawal.
4. It is submitted that the Petition was filed because the Respondent was interfering with the suit property, LR 23917 Nairobi when he was a Governor of Nairobi County, but he has since ceased interfering as he is no longer the Governor, and that the issue of ownership of the suit parcel were determined in ELC 457 of 2013.
5. In his final rejoinder, the Respondent avers that he has been put through expenses and is entitled to costs on full scale.



6. I have considered the import of Rule 27 of the *Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules*, 2013 which regulates withdrawal of constitutional petitions. But again, I have considered the explanation given by the petitioner as to why he desires to withdraw the suit; that the respondent is no longer interfering with the suit property.
7. The Court also considers that while the respondent appears to resist the Notice of withdrawal of the petition, at the inception of the suit, he had filed a Preliminary Objection dated 22.1.2019 objecting to the hearing of the suit. Further, on 9.2.2023, he had sought the dismissal of the suit on account of the Petitioner's non-attendance. Additionally, as noted by this court in its ruling of 9.2.2023, the Respondent occasioned delay in the prosecution of this matter.
8. The Supreme Court in the case of *Raila Odinga and Others v IEBC and Others* SCK Petition No. 5 of 2013 [2013] eKLR held that;

 “A Court of law should not allow the prescriptions of procedure and form to trump the primary object of dispensing substantive justice to the parties.

 The court as an agency of the processes of justice is called upon to appreciate all the relevant circumstances and the requirements of a particular case and conscientiously determine the best course.”
9. The best course for this matter is to bring it to an end. Thus this suit is hereby marked as withdrawn with costs to the respondent.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 14TH DAY OF DECEMBER, 2023 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Ouma for petitioner

H. Kinyanjui for Respondent

Court Assistant: Eddel

