

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 17 OF 2011

MAURICE A. WANJALA PLAINTIFF

VERSUS

ANNA N. WANJALA & 11 OTHERS DEFENDANT

R U L I N G

1. The applicant **Maurice Wanjala** brought a notice of motion dated **5.12.2013** in which he seeks an order vacating the order of this court given on **26.6.2013** staying this suit. The applicant contends that he has since withdrawn the present suit against the respondent and that therefore the order staying this suit is therefore of no effect.

2. The applicant's application is opposed through a replying affidavit filed by the respondent in court on **29.1.2015**. The respondent contends that she is not aware whether the suit against her had been withdrawn and that even if that was the case, this application is made in bad faith as any orders which may be granted will have far reaching consequences in the present case. She is therefore opposed to the vacation of the orders staying this suit which orders were given after all parties were fully heard.

3. I have considered the applicant's application as well as the opposition to the same by the respondent. The only issue for determination in this suit is whether the orders of **26.6.2013** have been rendered ineffective following the withdrawal of the suit against the respondent or not. The respondent herein had filed an originating summons against the applicant herein in Kitale **HCCC. No.130 of 2010**. The respondent had sought a declaration that the applicant was holding five acres in trust for her out of **LR.No. Waitaluk/Kapkoi Block 10/Kapkoi Sisal/152** and that the said five acres should vest in her. The applicant subsequently filed the present suit against the respondent and eleven others seeking orders of eviction. The respondent herein moved the court seeking orders of stay of proceedings in this case pending the hearing and determination of the originating summons which she had filed earlier on. The respondent's application was granted and the present suit was stayed pending determination of the originating summons.

4. The applicant herein did not file any appeal against the court's ruling of **26.6.2013**. He instead filed a notice of withdrawal of this suit against the respondent who was the first defendant. It is on this basis that the applicant now seeks orders that by virtue of the withdrawal of the suit against the respondent, the orders staying this suit have been rendered ineffective and ought to be vacated.

5. The present suit was filed against the respondent and eleven others on the ground that the respondent had sold part of the suit land to the eleven defendants. The suit land is the subject matter in both suits. The withdrawal of the suit against the first defendant (respondent) only does not change the position. The fact remains that the suit property is the same and the respondent cannot be severed from this suit by the mere fact that her name has been removed. She is at the centre of this suit just as in the other one. The orders of **26.6.2013** have therefore not been rendered ineffective as claimed by the applicant. There was an issue raised that the respondent was not served with notice of withdrawal of this suit. **Order 25 rule 1 of the civil Procedure Rules 2010** provides that a plaintiff may at any time before the setting down of the suit for hearing give notice in writing discontinuing the suit against any or all the defendants. Such notice is required to be served on all parties. There is no evidence that the withdrawal notice was served on all the parties leave alone the respondent.

6. I do not find any merit in this application. The same is hereby dismissed with no order as to costs.

It is so ordered.

Dated, signed and delivered at Kitale on this 28th day of September, 2015.

E. OBAGA

JUDGE

In the presence of Applicant . Court Assistant - Winnie

E. OBAGA

JUDGE