



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT ELDORET

E & LC. NO.188 OF 2016

ESTHER JEROTICH ROTICH.....1ST PLAINTIFF

JOHN KIPKIRUI ROTICH2ND PLAINTIFF

VERSUS

SIDIAN BANK LTD [*Formerly K-Rep Bank Ltd*].....DEFENDANT

RULING

[Defendant's letter dated the 8th December 2018 and subsequent submissions]

1. This suit was commenced through the plaint dated the 1st July, 2016 and filed on the 7th July, 2016 in which the plaintiffs sought for *inter alia* a declaration that the statutory notice dated the 23rd March, 2016 has not been properly served upon them and taking accounts of loan paid and outstanding. The claim is opposed by the defendant through their statement of defence filed on the 5th August, 2016.

2. The record confirms that the defendant filed their Bill of Costs dated the 26th February, 2019 on the 28th February, 2019. The notice of taxation was issued and served upon the plaintiffs as confirmed by the affidavit of service sworn on the 3rd June, 2019. The learned counsel for the parties were heard by the Deputy Registrar and the ruling of the 4th March 2020 delivered.

3. The in the ruling of the 4th March, 2020, the learned Deputy Registrar found *inter alia*, that “*I have perused the entire court records, considered the submissions by parties and note that no order as to costs has been made or entered as per the requirements of Order 25 Rule 3 of the Civil Procedure Rules, 2010. Thus there is no notice of withdrawal of suit in the file records. The court proceedings do not show any endorsement of the Notice of Withdrawal of suit. In the premises I find the Bill of Costs dated 26th February 2019 to be premature*”

4. The learned counsel for the Defendant then appeared before the court on the 1st March 2022 and sought for directions on the issue of costs and interests as pursued through their letter dated the 8th December 2018. The court has taken time to peruse the entire record, and upon considering the submissions by counsel for the Defendant come to the following findings;

a. That upon receipt of the Defendant's counsel letter dated the 8th December 2018, the Deputy Registrar responded through the letter dated the 20th February 2019 communicating that “... there is no Notice of Withdrawal of suit in the file as indicated in your letter and thus judgement cannot be entered.”

b. That Order 25 Rule 3 of the Civil Procedure Rules provides as follows;

“*Upon request in writing by any defendant the registrar shall sign judgement for costs of a suit which has been wholly discontinued, and any defendant may apply at the hearing for costs of any part of the claim against him which has been withdrawn.*”

The withdrawal of a suit is under Order 25 Rule 1 of the said Rules is required to be in writing and served upon all the parties.

c. That in view of the Deputy Registrar's letter and the ruling referred to above, whose findings remains unchallenged to date, and as the parties herein have not filed any notice to withdraw the suit either wholly or in part, the court find the position taken by the Defendant in seeking for an order on costs to be without basis. The suit is still pending and unless otherwise compromised, the Defendant's Bill of Costs has been filed before the suit's determination.

5. That flowing from above, the court is in agreement with the Deputy Registrar's ruling of the 4th March 2020, on the matter of costs, and is hereby upheld.

Orders accordingly.

DATED AND VIRTUALLY DELIVERED THIS ...23rd DAY OF MARCH, 2022

S.M.KIBUNJA,J.

ELC ELDORET.

IN THE VIRTUAL PRESENCE OF;

PLAINTIFFS:

DEFENDANT:*Absent*

COUNSEL:

COURT ASSISTANT: ONIALA

S.M.KIBUNJA,J.

ELC ELDORET