



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Okumu v Minene (Environment and Land Appeal 46 of 2021)  
[2022] KEELC 36 (KLR) (28 April 2022) (Ruling)**

Neutral citation: [2022] KEELC 36 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY  
ENVIRONMENT AND LAND APPEAL 46 OF 2021  
GMA ONGONDO, J  
APRIL 28, 2022**

**BETWEEN**

**DICK OTIENO OKUMU ..... APPELLANT**

**AND**

**JOHN OORO MINENE ..... RESPONDENT**

*(Being an appeal from the Chief Magistrates Court from the judgment of the Honourable Learned Trial Magistrate HON. T. OLANDO (SRM) sitting at Homa-Bay on the 20th November, 2019.)*

**RULING**

1. The appellant, Dick Otieno Okumu through learned counsel, Ms Odera instructed by M/S Nyauke and Company Advocates has sought to withdraw the instant appeal with no orders as to costs. That the appellant does not intent to pursue the appeal.
2. The appeal was initiated by way of a memorandum of appeal dated 26<sup>th</sup> November 2019 based on the grounds, inter alia;
  - a. The learned trial Magistrate having established that the appellant was the rightful owner of the suit parcel of land failed in law and in fact to make finding that the respondent was in occupation of the suit parcel of land unjustifiably.
  - b. The learned trial magistrate misdirected himself by not finding that the appellant had proved his case on balance of probability and as such the appellant was entitled to all the prayers as sought in the subordinate court.
3. section 78 (2) of the [Civil Procedure Act](#) Chapter 21 Laws of Kenya and Order 42 Rule 32 of the [Civil Procedure Rules](#), 2010 provide for the powers of the appellate court on appeal. This court has the



powers to give any direction before the hearing of the appeal as stipulated in section 79 (C) of the *Civil Procedure Act* Chapter 21 Laws of Kenya.

4. The application is made in conformity with the law. I find it meritorious.
5. So, the application by the appellant's counsel for the withdrawal of this appeal is hereby allowed with no orders with costs.

**DATED, DELIVERED AND SIGNED AT HOMA- BAY THIS 28<sup>TH</sup> DAY OF APRIL 2022**

**G.M.A ONG'ONDO**

**JUDGE**

**Present;**

- a) Ms Odera, learned counsel for the appellant
- b) Terrence, court assistant

**G.M.A ONG'ONDO**

**JUDGE**

