



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Environmental & Land Case 999 of 2012

MOHAMMED SHAHID MOUGHAL.....PLAINTIFF

VERSUS

MICHEAL MOOKE KIKAYE.....1ST DEFENDANT

LETIA TAPORU SARIMOI.....2ND DEFENDANT

PARASHO OLE LEMUNYO.....3RD DEFENDANT

RULING.

The Plaintiff instituted a suit against the three Defendants by way of a Plaint dated 13/12/2012 accompanied by a Notice of Motion application of the same date. Subsequently on 5/2/2013 the Plaintiff filed a Notice of Withdrawal dated 31/1/2013 under Order 25 Rule 1 of the Civil Procedure Rules to discontinue the suit against the 2nd and 3rd Defendants. In the meantime, the 2nd and 3rd Defendants on 11/2/2013 filed a Notice to Enter Appearance dated 8/2/2013. The 2nd and 3rd Defendants also on 11/2/2013 filed a joint Defence to the Plaint. Vide a letter dated 7/2/2013, the 2nd and 3rd Defendants wrote to the Deputy Registrar requesting for an order for costs pursuant to Order 25 Rule 3. They requested in the alternative to have the matter mentioned before Court in order to make relevant applications.

The matter did indeed come before Court. After several attempts at negotiating on this aspect, counsels left it for the Court to rule on the subject. Thus the issue to be determined by before this Court is that of costs in view of the discontinuance of the suit in respect of the 2nd and 3rd Defendants. A Plaintiff, pursuant to Order 25 Rule 1 of the Civil Procedure Rules, before the suit is set down for hearing is at liberty to wholly discontinue a suit or withdraw a part of the claim against a Defendant(s).

1. At any time before the setting down of the suit for hearing the plaintiff may

By notice in writing, which shall be served on all parties, wholly discontinue his

suit against all or any of the defendants or may withdraw any part of his claim,

and such discontinuance or withdrawal shall not be a defence to any subsequent

action.

Sub-Rule 3 thereof gives the Defendant an opportunity to request for an order for costs in the event that the suit is discontinued or a part of the claim is withdrawn.

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and any defendant may apply at the hearing for the costs of any part of the claim against him which has been withdrawn.

The rules on costs in the event of a discontinuance of a suit or withdrawal of a claim are clear. I find that the Defendant has rightfully requested for costs. In the circumstances, I direct that the file be placed before the Deputy Registrar for purposes of signing judgments for costs in respect of the discontinued suits.

Dated, Signed and Delivered this 22nd day of April 2013

L.N. GACHERU

JUDGE

In the Presence of:-

.....for the Plaintiff

.....for the 1st Defendant

.....for the 2nd and 3rd Defendants

Anne : Court Clerk