



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**OF KISII**  
**Civil Suit 130 of 2005**

**SOSPETER MOINDI.....PLAINTIFF/APPLICANT**

**VERSUS**

**SIRO MOGAKA.....DEFENDANT/RESPONDENT**

**RULING**

The plaintiff filed an application under Order XXIV rule 1 of the **Civil Procedure rules** and **sections 3, 3A and 27 of the Civil Procedure Act**. He sought leave to withdraw this suit with no order as to costs.

In his affidavit in support of the application, he stated that he is about 102 years and in poor health.

He had sued the respondent's father "**for unlawfully making himself a partner in plot No. Kisii/Municipality/Block II/66**" without his consent. A 33 years lease over the said parcel of land was issued on 9/6/1953 and it expired in 2006. The same was renewed on 3/1/2010 for 99 years with effect from 1/6/1953.

The suit has therefore been overtaken by events, he stated.

The application was opposed. The defendant stated that the plaintiff's suit lacked merits and added that there was no evidence that the lease over the said parcel of land had been renewed. He said that the plaintiff's suit ought to be heard or withdrawn with costs.

Considering the nature of the application before me, I cannot compel the plaintiff to proceed with his case if he desires to withdraw the same.

On the other hand, it would be unjust to the defendant to order that the suit be withdrawn without awarding him costs of the same. Ordinarily, costs follow the event.

In the circumstances, I grant the plaintiff leave to withdraw his suit entirely but with costs to the defendant.

**DATED, SIGNED AND DELIVERED AT KISII THIS 16<sup>TH</sup> DAY OF APRIL, 2010**  
**D. MUSINGA**  
**JUDGE.**

**16/4/2010**

Before D. Musinga, J.

Mobisa – cc

N/A for the Plaintiff

N/A for the Defendant

**Court:** Ruling delivered in open court on 16<sup>th</sup> April, 2010.  
**D. MUSINGA**  
**JUDGE.**