

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MALINDI

CIVIL SUIT 43 OF 2008

JULIUS MWIVITHI NZUKU.....PLAINTIFFS

VERSUS

FERNANDO VISCHI & 21 OTHERS.....DEFENDANTS

RULING

Mr. Wasunna, counsel for plaintiff/applicant has indicated to this court their wish to withdraw chamber Summons dated 18-8-08 and striking out of the re-amended plaint dated 27-7-08 and the further re-amended plaint dated 29-7-08. Both Mr. Odera and Mr. Maosa have no objection to the prayers sought. Mr. Wasunna then requests that no orders on costs be made as by their move, they have taken the earliest opportunity to assent in the quagmire that has bedeviled this matter. Both Mr. Odera and Mr. Maosa disagree, submitting that they have had to make a lot of input in terms of getting up and preparing for the applications which were coming up. Further, that costs follow the event.

I will allow for the withdrawal of the chamber summons dated 18-8-08. I also strike out the re-amended plaint dated 27-7-08 and the further re-amended plaint dated 29-7-08.

I appreciate the approach taken by counsel for the applicants towards ensuring that this matter is not bogged down by too many “side issues” as it were.

However I cannot grieve the fact that respondents did instruct their counsel to defend the pleadings now withdraw/struck out and that they had to prepare for the same. I had earlier alluded to parties adhering to rules of procedure in the pleadings but plaintiffs did not take the cue. Section 27 of the Civil Procedure Act indicates that costs follow the event of any action unless the judge thinks otherwise.

There is nothing from the earlier events in this matter to move. We think that I should depart from the provisions and make no orders regarding costs.

I therefore award costs of this application dated 18-8-08 and the amended and re-amended plaints to the defendants/respondents.

Dated and delivered this **8th** day of **June 2009** at Malindi.

H. A. OMONDI

JUDGE

8-6-09