



Mukindia & another v Consolidated Bank of Kenya Ltd & 2 others (Environment & Land Case E001 & 1 of 2022 (Consolidated)) [2022] KEELC 15127 (KLR) (30 November 2022) (Ruling)

Neutral citation: [2022] KEELC 15127 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND CASE E001 & 1 OF 2022 (CONSOLIDATED)
CK NZILI, J
NOVEMBER 30, 2022**

BETWEEN

CHARLES MURUGU MUKINDIA 1ST PLAINTIFF

RISE UP COMPANY LIMITED 2ND PLAINTIFF

AND

CONSOLIDATED BANK OF KENYA LTD 1ST DEFENDANT

PHILIPS INTERNATIONAL AUCTIONEERS 2ND DEFENDANT

**AS CONSOLIDATED WITH
ENVIRONMENT & LAND CASE 1 OF 2022**

BETWEEN

GACHERI DAVID MUKINDIA PLAINTIFF

AND

CONSOLIDATED BANK OF KENYA LTD 1ST DEFENDANT

CHARLES MURUGU MUKINDIA 2ND DEFENDANT

RULING

1. This ruling relates to a notice of withdrawal of the suit filed by the plaintiffs in E001 of 2022 dated July 18, 2022 filed pursuant to order 25 rule 1 of the *Civil Procedure Rules*. The same has been served on the parties in both files as consolidated *vide* an order dated January 26, 2022.
2. When the matter came up for directions on September 19, 2022 Mr Kirimi for the plaintiff in ELC No 1 of 2022 told the court that the instructions he had from his clients were for the deconsolidation



- of the two suits while Mr Apollo & Mr Kimaita for 1st & 2nd defendants in ELC No 1 of 2022 said that there would be no need for deconsolidation if the withdrawal was to be allowed.
3. Mr Kirimi submitted that the withdrawal was in bad faith and his clients were fearful that the withdrawal was a spirited effort to have the property auctioned by the bank. Miss Kinyua for the plaintiff in E001 of 2022 said that she was not opposed to the withdrawal but needed time to go and consult her clients.
 4. Parties were given more time to do so until October 27, 2022. The plaintiff in E001 of 2022 filed an application dated September 16, 2022 seeking for deconsolidation which was certified urgent on September 20, 2022 and a date for interpartes given for October 27, 2022. The said application was not served as ordered upon the respondents. No reasons were given on October 27, 2022 hence the court dismissed the same for non-service.
 5. Mr Kimaita told the court that his client instructions were that since there was a pending appeal and an application in the Court of Appeal Nyeri, with a ruling due on December 2, 2022, the effect of the withdrawal would mean that the pending appeal and the application would be rendered an academic exercise. Counsel therefore submitted that his clients had no objection to the withdrawal as long as the Court of Appeal matter(s) were also withdrawn.
 6. Mr Musyoka for the plaintiffs in E001 of 2022 told the court that his application had been served which was denied by the other parties present. Miss Kinyua for the plaintiff wondered how parties could enter into a consent while Charles Mukindia was servicing the loan.
 7. Given the rival position, the court has now to determine the withdrawal notice on its merits.
 8. Order 25 rule 1 of the [Civil Procedure Rules](#) provides that a plaintiff may at any time before the setting down of a suit for hearing by notice in writing served upon 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. Under order 25 rule 2 [Civil Procedure Rules](#), the court has the discretion to make any further order as necessary for the implementation and execution of the terms of the decree.
 9. It is trite law that a party has a legal right to withdrawal a suit, through a prescribed format. Under order 25 rule 1 [Civil Procedure Rules](#), the steps required are set out. In this suit the court had directed the parties to comply with order 11 [Civil Procedure Rules](#) by September 19, 2022. The suit has not been set down for hearing. So, the plaintiffs filed the notice of withdrawal as per order 25 rule 1 of the [Civil Procedure Rules](#).
 10. The filing of the notice of withdrawal was in furtherance of the plaintiffs right as prescribed by law. The court has been approached through the known procedure and has to exercise its mandate under article 159 of [the Constitution](#) as read together with sections 1A, 1B of the [Civil Procedure Act](#).
 11. None of the other parties have filed a notice or grounds to oppose the withdrawal save for the defendants who submitted that while not objecting to the withdrawal, the same should be extended to the pending appeal.
 12. It is common knowledge that the Court of Appeal is governed by a different constitutional edit and the [Appellate Jurisdiction Act](#). The manner of withdrawing an appeal before the Court of Appeal is quite different from the manner of withdrawing the suit in this court. This court has no powers to issue any binding orders on withdrawal of a pending appeal in that court.



13. There is no indication if the appeal has been filed by the parties who have filed the notice of withdrawal of the suit. The court cannot exercise a jurisdiction it does not possess.
14. Similarly, none of the defendants or plaintiffs in the other consolidated suit have given any reasons on why the right of a party in withdrawing a suit should be fettered by this court.
15. In *PIL Kenya Ltd v Joseph Opony (2001) eKLR*, the Court of Appeal held a party under order 25 rule 1 *Civil Procedure Rules* does not require leave of the court to withdraw a suit nor does he need a court order to give effect to the withdrawal.
16. In *Beijing Industrial Designing & Research Institute v Lagoon Development Ltd (2015) eKLR*, the Court of Appeal held that a party under order 25 rule 1 *Civil Procedure Rules* holds an absolute right to withdraw the suit which cannot be curtailed.
17. In my considered view therefore, there can be no basis in law for the plaintiff in E001 of 2022 to object to the withdrawal and so are the defendants in the two suits.
18. The exercise of the right to withdraw is not in any way affected by the consolidation. This is more so when the plaintiff in the other suit has expressed interest to seek to deconsolidate the two suits.
19. The consolidation was merely for purposes of saving costs, time, efforts and to make the conduct of the suits convenient by treating them as one action which can still be undone where a party chooses to abandon his claim.
20. The upshot is that the suit brought against the defendants by the plaintiffs in E001 of 2022 is hereby marked withdrawn with no order as to costs.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 30TH DAY OF NOVEMBER, 2022

In presence of:

C/A: Kananu

Kimaita for defendants in E001 of 2022 and 1st defendant in ELC No 1 of 2022.

Musyoka for Kinyanjui Kirimi for plaintiff in ELC No 11 of 2022

Miss Kinyua for plaintiff in E001 of 2022 and defendant in ELC No 1 of 2022

HON C K NZILI

ELC JUDGE

