



**Gatundu and Mangu Farm Company Limited v National Land Commission & another; Kariuki & 7 others (Interested Parties) (Land Case E350 of 2024) [2025] KEELC 338 (KLR) (31 January 2025) (Ruling)**

Neutral citation: [2025] KEELC 338 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
LAND CASE E350 OF 2024  
MD MWANGI, J  
JANUARY 31, 2025**

**BETWEEN**

**GATUNDU AND MANGU FARM COMPANY LIMITED ..... PLAINTIFF**

**AND**

**NATIONAL LAND COMMISSION ..... 1<sup>ST</sup> DEFENDANT**

**NAIROBI CITY COUNTY GOVERNMENT ..... 2<sup>ND</sup> DEFENDANT**

**AND**

**SIMON WAIN AINA KARIUKI ..... INTERESTED PARTY**

**MONICA WANZA WAMBUA ..... INTERESTED PARTY**

**ZACHARY MAINA KABUGI ..... INTERESTED PARTY**

**SAMUEL NGARI KIHUNGI ..... INTERESTED PARTY**

**SIMON GICHURU KIMOTHO ..... INTERESTED PARTY**

**MICHAEL MWAURA KINYANJUI ..... INTERESTED PARTY**

**SUSAN WANGU KIHARA ..... INTERESTED PARTY**

**CAROLINE KARIMI ..... INTERESTED PARTY**

**RULING**

(On the import of a notice of withdrawal of suit under Order 25 rule 1 of the Civil Procedure Rules)

1. I have carefully considered the submissions by the counsel for all the parties in respect to the notice of withdrawal of suit filed by the Plaintiff. The notice was filed yesterday, the 30<sup>th</sup> January 2025, on the



eve of the delivery of the ruling of this court on the application by the 2<sup>nd</sup> Defendant and the other by the Interested Parties.

2. Though the notice of withdrawal does not indicate under which rule of Order 25 it is brought under, considering the stage at which this case is at, it falls under rule 1 of Order 25 of the Civil Procedure Rules. The rule allows a Plaintiff to withdraw or discontinue a suit at any time before the setting down of the suit for hearing by a notice in writing, against all or any of the Defendants. Such notice is required to be served upon all the parties.

3. A party has a right to discontinue or withdraw his suit. As the Court of Appeal held in the case of Beijing Industrial Designing & Researching Institute –vs- Lagoon Development Limited (2013) eKLR,

“As a general proposition, the right of a party to discontinue or withdraw his claim cannot be questioned. There are many circumstances when a Plaintiff may legitimately wish to discontinue his suit or withdraw his claim.”

4. The court further noted that there are many legitimate reasons that may cause a Plaintiff to wish to withdraw his claim including the realization of the weakness of his claim, which I believe may be the reason behind the withdrawal by the Plaintiff in this case.

5. The Supreme Court of Kenya in Nicholas Kiptoo Arap Korir Salat –vs- IEBC & 7others –SC – Application No. 16 of 2024, expressed a similar opinion on the right of a party to withdraw a suit stating that,

“A party’s right to withdraw a matter cannot be taken away. A court cannot bar a party from withdrawing his matter. All that the court can do is to make an order as to costs where it is deemed appropriate.”

6. Under rule 1 of Order 25, all that a Plaintiff is required to do is to file a notice of withdrawal or discontinuance of the suit. The notice is required to be served on the Defendants. The act of serving is intended to notify the Defendants/Parties of the withdrawal of the suit. The withdrawal under rule 1 otherwise takes effect upon filing of the notice.

7. In the case of Priscilla Nyambura Njue –vs- Goevhem Middle East Limited; Kenya Bureau of Standards (interested party ) (2021) eKLR, the court discussed the consequences of withdrawal of a suit and noted that;

“The consequence of withdrawal is that the Plaintiff ceases to be Plaintiff before the court. If he is the only Plaintiff and withdraws the whole of the suit, the suit comes to an end and nothing remains pending before the court...it stands reason that when on withdrawal the Plaintiff ceased to be a party and the court ceased to have jurisdiction over the suit and thus became functus officio nothing but a fresh suit can again invest the court with jurisdiction over it. As far as the withdrawn suit is concerned the suit is at an end and no further proceedings can be taken in it; the suit and the Plaintiff do not exist...”

8. Consequently, this suit having been withdrawn, it ceased to exist upon the filing of the notice of withdrawal. No further proceedings including the delivery of the scheduled ruling can be taken in it.

9. The concerns by the parties as expressed in their oral submissions that the Plaintiff is abusing the process can be addressed by an award of costs. If the abuse persists, the law has mechanisms for addressing it conclusively.



10. This suit was principally between the Plaintiff and the Defendants. The application by the Interested parties, who are not principal parties, lacks any grounding to stand on upon the withdrawal of the suit against the Defendants.
  11. The ruling of the court that was due today is overtaken by events. It became otiose the moment the suit was withdrawn.
  12. I hereby mark this suit as withdrawn. The Defendants are at liberty to apply for costs if they so wish. The file is closed.
- It is so ordered.

**DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 31<sup>ST</sup> DAY OF JANUARY 2025.**

**M.D. MWANGI**

**JUDGE**

**In the virtual presence of:**

Mr. Okoli for the Plaintiffs

Ms. Mwanyika h/b for the 1<sup>st</sup> Defendant

Mrs. Maina for the 2<sup>nd</sup> Defendant

Mr. Waithaka for the Interested Parties

Court Assistant: Mpoye

**M.D. MWANGI**

**JUDGE**

