



REPUBLIC OF KENYA



**Tuitoek v Kogo & another (Land Case (Originating Summons)
E006 of 2025) [2025] KEELC 6145 (KLR) (16 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6145 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET
LAND CASE (ORIGINATING SUMMONS) E006 OF 2025
GMA ONGONDO, J
SEPTEMBER 16, 2025**

BETWEEN

NEHEMIAH KIPLAGAT TUITOEK PLAINTIFF

AND

CHARIT KIRWA KOGO 1ST DEFENDANT

SUSANA TARKWEN 2ND DEFENDANT

RULING

1. In his application by way of Notice of motion dated 29th July 2025, the applicant through Lagat Joshua and Company Advocates, sought, inter alia, an injunction against the respondents in respect of the suit land reference number Nandi/ Nandi/ Kabulonik/596.
2. Notably, the application was not served on the respondent.
3. By a notice of withdrawal dated 11th September 2025, the applicant has sought to withdraw the application.
4. In that regard, is the notice of withdrawal meritorious?
5. The application has not been responded to as there is no evidence on record that the same has been served.
6. It is well settled that in an application of this nature, where there is no evidence of service, the scales tilt in favour of the applicant. That therefore, the matter be deemed as withdrawn; see *Karurie-vs-Kamau {2025} KECA 366 (KLR)*.
7. Further, it must be noted that the withdrawal sought by the applicant herein is within the discretion of this court; see also *M & E Consulting Engineers Limited-vs-Lake Basin Development Authority and another (2015) eKLR*.



8. In the foregone, the notice of withdrawal dated 11th September 2025 is merited.
9. Thus, the application dated 29th July 2025 is hereby marked as withdrawn.
10. In the circumstances, there shall be no orders as to costs being guided by the case of Jasbir Singh Rai & 3 others-vs-Tarlochan Rai & 4 others (2014) eKLR and the proviso to section 27 (1) of the [Civil Procedure Act](#) Chapter 21 Laws of Kenya.
11. It is so ordered.

DATED AND DELIVERED VIRTUALLY THIS 16TH DAY OF SEPTEMBER 2025

G M A ONGONDO

JUDGE

