



Mwangi v Shulie & 2 others (Environment & Land Miscellaneous Case E075 of 2023) [2024] KEELC 6659 (KLR) (11 October 2024) (Ruling)

Neutral citation: [2024] KEELC 6659 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND MISCELLANEOUS CASE E075 OF 2023**

**MD MWANGI, J
OCTOBER 11, 2024**

BETWEEN

JOHN KIBIRIBIRI MWANGI PLAINTIFF

AND

ABDULAI SHULIE 1ST RESPONDENT

DIRECTOR OF CRIMINAL INVESTIGATIONS 2ND RESPONDENT

CHIEF LAND REGISTRAR, NAIROBI 3RD RESPONDENT

RULING

(In respect of the Notice of Motion dated 18th September, 2023 brought under the provisions of Sections 1A, 1B & 3A of the *Civil Procedure Act*, Sections 31 and 101 of the *Land Registration Act*, 2012, Article 40 and 159(2) (d) & (e) of *the Constitution* of Kenya).

Background

1. The Applicant in this case initiated this matter by way of the Notice of Motion dated 18th September, 2023, brought under certificate of urgency. The Applicant seeks a raft of prayers as follows:-
 - a. That this application be and is hereby certified as urgent and service be dispensed with at the first instance and the same be heard Ex-parte.
 - b. That the Honourable Court be pleased to order the 1st and 2nd Respondents to produce in court the original certificate of title for property known as LR. No.209/4966 (I.R.11802) registered in the names of Kusumben Bhaskerrao Himabhai Patel for onward transmission to the Applicant.
 - c. That the Honourable court be pleased to direct the 3rd Respondent to proceed to have the charge registered against the property known as L.R.NO.209/4966 (I.R.1182) discharged.



- d. That the 3rd Respondent be ordered to have the property known as L.R.No.209/4966 (I.R.209/4966 transferred and/or registered in the names of the Applicant.
 - e. That the 1st and 2nd Respondents be condemned to pay the costs of this application.
 - f. That the Honourable court be pleased to grant any orders it deems fit and just.
2. The Applicant's application is premised on the grounds on the face of it and the supporting affidavit of John Kibiribiri Mwangi sworn on the 18th September, 2023.

Suit/Notice of Motion withdrawn

3. From the court's record, I do note that the Applicant filed a Notice of Withdrawal of suit under Order 25 Rule 1 of the Civil Procedure Rules dated 26th March, 2024 wholly withdrawing the suit/application dated 18th September, 2023. It was filed on 27th March, 2024 withdrawing the entire suit.
4. Rule 1 of Order 25 allows the Plaintiff by notice in writing, which shall be served on all parties, before the setting down of the suit for hearing, to wholly discontinue the suit against all or any of the defendants. It provides that;
- “At any time before the setting down of the suit for hearing the Plaintiff may by notice in writing, which shall be served on all the 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.”
5. Of course Order 25 contemplates a suit filed in accordance with the Civil Procedure Rules that is subject to various stages before being set down for hearing. This suit was initiated by way of a miscellaneous application. The provisions of Order 25 must therefore be applied with necessary modifications.
6. As I noted at paragraph 3 of this ruling, the Notice of Withdrawal was filed on 27th March, 2024. Directions on the hearing of this matter had not been given by that date.
7. Accordingly, the Applicant was at liberty to withdraw the matter, under the provisions of Order 25 of the Civil Procedure Rules, as he did.
8. Consequently, this matter shall be marked as withdrawn. The court makes no orders as to costs.
- It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 11TH DAY OF JULY 2024.

M.D. MWANGI

JUDGE

In the virtual presence of:

Mr. Owang for the Applicant

Mr. Muraguri for the 4th Defendant

N/A for the 1st - 3rd Defendants

Court Assistant: Yvette.

M.D. MWANGI



JUDGE

