



Letaari & 2 others (Suing as Legal Representative of the Estate of Ntaari Kilenyi Supeyo) v Kariuki & 3 others (Environment & Land Case 40 of 2020) [2022] KEELC 14637 (KLR) (8 November 2022) (Ruling)

Neutral citation: [2022] KEELC 14637 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 40 OF 2020
MN GICHERU, J
NOVEMBER 8, 2022**

BETWEEN

**DANIEL KISHEU LETAARI 1ST APPLICANT
VICTOR RUMPAS LETAARI 2ND APPLICANT
JOSHUA SANCHA LETAARI 3RD APPLICANT
SUING AS LEGAL REPRESENTATIVE OF THE ESTATE OF NTAARI KILENYI
SUPEYO**

AND

**GEORGE NGURE KARIUKI 1ST RESPONDENT
SAMUEL KUNTAI TUNAI 2ND RESPONDENT
REGISTRAR OF LANDS, NGONG 3RD RESPONDENT
COUNTY GOVERNMENT OF KAJIADO 4TH RESPONDENT**

RULING

1. This ruling is on the notice of motion dated February 1, 2022, which is brought under article 162 (2) (b) of the *Environment and Land Court Act* and section 68 of the *Land Registration Act*, order 51, rule 1 of the *Civil Procedure Rules* and sections 1A, 1B and 3A of the *Civil Procedure Act*.
2. The motion seeks to strike out the plaintiffs' notice of withdrawal of the suit dated November 24, 2021 and set aside its orders issued on December 20, 2021 withdrawing the substantive suit herein and to reinstate the suit. Secondly, the motion seeks leave to have the plaintiffs' amend their plaint and set the suit down for a pre trial conference.



3. The grounds for seeking the above orders can be summarized as follows. The withdrawal of the suit was conditional. The condition was that the second defendant would pay the plaintiffs a total of Kshs 7 Million before the withdrawal of the suit. The second defendant has reneged on this condition by refusing to pay the agreed sum. The plaintiffs' counsel has filed a supporting affidavit dated 1/2/2022 elaborating on the details of change of mind by the second defendant.
4. The application is said to be opposed by the first defendant who is said to have filed a replying affidavit dated February 1, 2022. I have not seen the said affidavit on record. The only filing by the first defendant is a copy of written submissions dated October 8, 2022 and filed on October 11, 2022.
5. I have carefully considered the application in its entirety and I am in agreement with the first defendant's counsel that a withdrawal of a suit leaves no room for the reinstatement of the same suit through an application such as the current one. The only option left for the plaintiffs is to file a fresh suit. Order 25 (1) *Civil Procedure Rules* sets down that option of a fresh suit. For this reason, I dismiss the notice of motion dated 1/2/2022 with costs to the respondents.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 8TH DAY OF NOVEMBER, 2022.

M.N. GICHERU

JUDGE

