



**County Assembly of Nyamira v Ogori (Judicial Review
E005 of 2024) [2025] KEHC 2639 (KLR) (6 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 2639 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAMIRA
JUDICIAL REVIEW E005 OF 2024
WA OKWANY, J
MARCH 6, 2025**

BETWEEN

COUNTY ASSEMBLY OF NYAMIRA APPLICANT

AND

ENOCK OKERO OGORI RESPONDENT

RULING

1. The Applicant filed an Application dated 3rd November 2024 seeking, inter alia, leave to apply for a Judicial Review (JR) order for *certiorari* to bring to this court for purposes of quashing Gazette Notice Number 14229 of 2024 and 14230 of 2024.
2. When the matter came up for directions on 7th November 2024, the Respondent was granted 14 days to file a response to the application.
3. Parties were also directed to canvass the application by way of written submissions after which the matter was listed for mention on 11th December 2024 to confirm compliance with the court's directions.
4. The Applicant thereafter filed a Notice to withdraw the application on 29th November 2024 thereby setting the stage for the Respondent's objection to the withdrawal that is the subject of this ruling.
5. The matter was mentioned on 10th February 2025 when Mr. Bonuke, Learned Counsel for the Respondent, informed this court that he had filed a Replying Affidavit and submissions to the JR application. He therefore opposed the Notice of Withdrawal of the JR.
6. Mr. Mokua, Learned Counsel for the Applicant cited Order 25 Rule 1 of the [Civil Procedure Rules](#) (CPR) on the right to withdraw suits as long as the same has not been set down for hearing as opposed to the discontinuance of a suit under Order 55 Rule 2 of the [Civil Procedure Rules](#).



7. Counsel submitted that as at 29th November 2024 when he filed the Notice of Withdrawal of Application, the Respondent's Advocate had neither formally come on record nor filed any response. Counsel noted that the Notice of Appointment of Advocate was filed on 3rd December 2024 long after the Notice of Withdrawal had been filed. He urged the court to mark the application as withdrawn with no orders as to costs.
8. Mr. Bonuke, Advocate for the Respondent submitted that the Notice for Withdrawal should be rejected as the reasons for the withdrawal had not been disclosed.
9. He noted that the Notice of Withdrawal was filed at the same time with a similar JR Application before Kisii High Court being No. E007 of 2024 in which ex-parte orders were issued.
10. He submitted that this is a classic case of forum shopping and urged this court to punish the Applicant severely, in costs, in the event the withdrawal of suit was allowed.
11. I have carefully considered the parties rival arguments over the issue of the withdrawal of the JR Application. From the narration of the sequence of events that preceded the withdrawal of the application, it is clear that the Notice of Withdrawal was filed and served on 29th November 2024, several days before the Respondent filed the Notice of Appointment of Advocates.
12. Order 25 Rule 1 of the *Civil Procedure Rules* stipulates as follows: -

Withdrawal by plaintiff [Order 25, Rule 1]

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 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.
13. Guided by the above provisions and having noted that the Notice of Withdrawal was filed long before the Respondent filed its Notice of Appointment of Advocates and response, I find that the Applicant was well within his right to withdraw the JR Application.
14. I find that it is only fair and just to allow the withdrawal, with no orders as to costs considering that the Respondent had not formally come on record as at the time that the Notice of Withdrawal was filed.
15. It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NYAMIRA VIA MICROSOFT TEAMS THIS 6TH DAY OF MARCH 2025.

W. A. OKWANY

JUDGE

