



**Kipteng v Good Hope Sacco Limited (Miscellaneous Application
E023 of 2025) [2025] KEHC 12811 (KLR) (19 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12811 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAROK
MISCELLANEOUS APPLICATION E023 OF 2025
CM KARIUKI, J
SEPTEMBER 19, 2025**

BETWEEN

ANGELINE NAANYU KIPTENG APPLICANT

AND

GOOD HOPE SACCO LIMITED RESPONDENT

RULING

1. On 9.4.2025, the filed application herein dated the same date via CTS vide court receipt on record. On 10 April 2025, the court directed that it be served for directions on 24 April. 2025. The court, meanwhile, granted interim orders. Moreover, the matter was fixed as the respondent did not appear despite service having been made. The matter fixed for mention on 16.6.2025, a date the court was not sitting, but the Deputy registrar fixed the application for hearing on 7.7.025. On that date, the parties were not ready to proceed; thus, the matter was fixed on 30.7.025. Before that date, the applicant filed a notice of withdrawal of application dated 20.5.2025. She stated in the notice, Take notice that the applicant has today withdrawn the application with no order as to costs. On 30.7.2025, Mr Karanja, advocate, raised the issue of the notice aforesaid as the applicant was eager to proceed notwithstanding the notice to withdraw the application. She alleged that she did not withdraw the matter, and in fact, she was pleading ignorance of the existence of the same.
2. The respondents had already obtained it, and it was also mentioned in the CTS. She acknowledged filing it after the evidence was established, but claimed that it had not withdrawn the matter. The matter was adjourned for further directions on 18.9.2025. Meanwhile, in the same file, the applicant purported to amend the application without leave of the court and even converted it into a Judicial review matter, seeking prerogative orders to quash the cooperative tribunal proceedings and prohibit public officials from acting on the subject matter of the application. Thus, the two issues that arise are whether the matter, as it stands, was withdrawn by the notice on record and whether the matter is procedurally defective.



3. Order 25, rule 1 of Civil Procedure Rules:

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. Such discontinuance or withdrawal shall not be a defence to any subsequent action.

2.1. Where a suit has been set down for hearing, it may be discontinued, or any part of the claim withdrawn, upon the filing of a written consent signed by all the parties.

Where the suit has been set down for hearing, the court may grant the plaintiff leave to discontinue his suit or to withdraw any part of his claim upon such terms as to costs, the filing of any other suit, and otherwise, as are just.

The provisions of this rule and Rule 1 shall apply to counterclaims.

For clarity and certainty, a party has the liberty to withdraw whichever suit or application as may be desired. Such withdrawal has, however, to conform with the procedure provided for in Law. The court strictly follows the procedure found under Order 25 of the Civil Procedure Rules, and specifically in our instant suit, under Rule 25 sub-rule (1) & (2). Such a withdrawal is not a mere formality.

4. The matter had a hearing date; thus, the procedure of withdrawal was not complied with. The notice is defective and cannot be sustained; thus, it was struck out.

5. On the amended motion, the same purports to convert an application for leave out of time to an application for judicial review. Under The Fair Administrative Action Rules, 2024 (Koome Rules) Rule 11. Originating motion (1) An application for judicial review shall be by way of an originating motion accompanied by a supporting affidavit. The instant application can be filed in a separate suit and under the rules hereabove stated, thus the amended motion is fatally defective and struck out accordingly.

6. The net effect is that.

- i. The notice of withdrawal of the application dated 20.5.2025 is struck out together with the amended motion dated/amended 28.8.2025.
- ii. The costs are awarded to the respondents in the pursuit of justice.
- iii. The motion alive for hearing, therefore, is the one dated 9.4.2025. This is the motion that the parties should prepare for.
- iv. The said motion shall be fixed for hearing on merit.

DATED AND DELIVERED THROUGH MICROSOFT TEAMS AT NAROK THIS 19TH SEPTEMBER 2025

.....
CHARLES KARIUKI
JUDGE

