

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT CHUKA

CHUKA ELC CASE NO. E003 OF 2021

IRVINE MWENDA JAPHET.....PLAINTIFF

VERSUS

WILBERFRCE MICHENI1ST DEFENDANT

LISBETH KAIMURI2ND DEFENDANT

RULING

1. On **21st September, 2021**, the court directed that the application dated **18th May, 2021** be canvassed by way of written submissions. The Applicant/Plaintiff was to file and serve her submissions within 14 days and the Respondents/Defendants to file and serve theirs within 14 days of service. The matter was then fixed for directions on **21st September, 2021**. These directions were given by the court in the presence of the advocates for both parties.

2. When the matter came up for directions on **21st September, 2021**, only Mr. Mureithi, counsel for the Applicant/Plaintiff was present in court. Mr. Mureithi informed the court that his client intended to forego the interlocutory application dated **18th May, 2021** so that parties may deal with the main suit.

3. Order 25 of the Civil Procedure Rules allows a party to withdraw a suit (or application). However, even in the midst of the several proposition in respect to Order 25, there would be occasion, when a party's right to withdraw or discontinue ought to be fettered or curtailed. Order 25 Rule 2 provides that where a suit has been set down for hearing it may be discontinued, or any part of the claim withdrawn, upon the filing of written consent signed by all the parties.

4. In the instant case, the matter was due for directions on filing of submissions on the applicant's application on **21st September, 2021**. I note from the record that the Respondents had filed a replying affidavit on **7th June, 2021**. The Respondents however, did not appear in court on **21.9.2021** and no submissions had been filed by either party. The applicant has now sought to withdraw the interlocutory application in favour of expediting the hearing of the main suit. The application for withdrawal is not opposed. In my view, the applicant is within her right to withdraw the interlocutor application. The court is of the view that no prejudice would be suffered by the Respondents since the main suit is pending.

5. Consequently, leave is hereby granted to the Applicant/Plaintiff to withdraw the notice of motion application dated **18th May, 2021**. The said application is hereby marked as withdrawn.

6. The matter is fixed for directions on **13th October, 2021**.

7. The plaintiff is directed to serve the defendants.

DATED, SIGNED AND DELIVERED AT CHUKA THIS 21ST DAY OF SEPTEMBER, 2021 IN THE PRESENCE OF:

C/A: Ndegwa

Mureithi for Plaintiff/Applicant

N/A for Defendants/Respondents

C. K. YANO,

JUDGE.