



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NYERI**

**ELC NO. 470 OF 2014**

**(Formerly NYERI HCCC 63 of 2011)**

**JOSEPH GATERU KABURI ..... PLAINTIFF**

**-VERSUS-**

**THE COMMISSIONER OF LANDS (*Substituted by***

**NATIONAL LAND COMMISSION) .....1<sup>ST</sup> DEFENDANT**

**GABRIEL NJOROGE MBUTHIA .....2<sup>ND</sup> DEFENDANT**

**RULING**

1. By the Notice of Motion dated 8<sup>th</sup> July, 2021, Joseph Gateru Kaburi (*the Plaintiff*) prays for orders as follows:

1. That this Honourable court may be pleased to allow the Plaintiff to withdraw his application dated 6<sup>th</sup> February, 2019 in view of the orders made on 24<sup>th</sup> February, 2021;
2. That this Honourable court may be pleased to set aside the orders made herein on 14<sup>th</sup> July, 2015, withdrawing the case and reinstate the suit; and
3. That the costs of this application be provided for.

2. The application which is supported by an affidavit sworn by the Plaintiff is premised on the grounds:

- (i) That the Plaintiff was misled into withdrawing the suit following the registration of a lease for the suit premises and the issuance of the same to himself on 9<sup>th</sup> November, 2012;
- (ii) That the litigation counsel from the Attorney General's office purported to consent to the order yet the Attorney General was not on record in the matter;
- (iii) That it has now emerged that the status of the plot still has issues as there are 2 Green Cards in relation to the same making investigations of the title impossible, impractical and impracticable;
- (iv) That this court should therefore reinstate the suit, and order the cancellation/revocation of the Green Card opened in the name of the 2<sup>nd</sup> Defendant to cure the problem of double allocation; and
- (v) That it is fair and just that this Honourable court grants the orders sought to serve the ends of justice.

3. Neither the National Land Commission (*the 1<sup>st</sup> Defendant*) nor Gabriel Njoroge Mbuthia (*the 2<sup>nd</sup> Defendant*) have filed anything in objection or opposition to the application.

4. This suit was instituted by the Plaintiff vide a plaint dated 13<sup>th</sup> June, 2011 seeking a declaration that the certificate of lease in respect of the suit premises being LR No. Nanyuki/Municipality/Block 6/185 issued in the name of the 2<sup>nd</sup> Defendant is invalid and was obtained in an

irregular manner. The Plaintiff further sought a declaration that the proprietary rights in the said land vests on himself. In the alternative he urged the court to confirm the validity of the lease issued to himself on 11<sup>th</sup> March, 2004.

5. As it turned out and despite service by advertisement in the newspapers, none of the Defendants entered appearance or filed any defence to the claim. On 14<sup>th</sup> July, 2015, the Plaintiff's counsel appeared in court and caused the suit to be marked as withdrawn with no order as to costs.

6. Some 4 years later, the Plaintiff filed an application dated 6<sup>th</sup> February, 2019 seeking an order to set aside the orders withdrawing the case and to reinstate the suit for hearing. However, before that application could be heard, the Plaintiff filed the present application wherein he now seeks to be allowed to withdraw the application dated 6<sup>th</sup> February, 2019 and to again have the orders made on 14<sup>th</sup> July, 2015 set aside and to reinstate the suit for hearing.

7. It is the Plaintiff's case that he was misled into withdrawing the suit following the registration of a lease which was issued in his name on 9<sup>th</sup> November, 2012. The Plaintiff avers that the suit premises continues to have another Green Card registered in the name of the 2<sup>nd</sup> Defendant and that accordingly the issue was never resolved as he had presumed.

8. As it were, a party's right to withdraw a matter before the court cannot be taken away. A court cannot bar a party from withdrawing a matter, as is reflected under the provisions of **Order 25 of the Civil Procedure Rules, 2010**. The withdrawal of the suit is however by itself the end of the suit and I am not aware of any provision in law conferring upon the Plaintiff the right to revoke such withdrawal.

9. Once the suit was marked as withdrawn as was done herein on 14<sup>th</sup> July, 2015, it ceased to exist and this court has no power to reinstate the same. As was stated in **George Mwangi Kinuthia –vs- the Attorney General (2019) eKLR**:

**“It follows (that) a party who withdraws his suit cannot seek to reinstate the same but a party withdrawing a suit has an option of instituting a fresh action as per the provisions of Order 25 Rule 4 of the Civil Procedure Rules, 2010. The order and rule herein above do not envisage a litigant who has withdrawn the suit to seek a reinstatement; as a withdrawal means there is no suit pending anymore. In view of the above it is my view (that) once a suit has been withdrawn there is nothing that can be sought to be reinstated.”**

10. In the premises, I am not persuaded that there is any basis for the Plaintiff's application dated 8<sup>th</sup> July, 2021. The same is dismissed with no order as to costs.

**RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AT NYERI THIS 16TH DAY OF DECEMBER, 2021.**

In the presence of:

Mr. Peter Muthomi for the Plaintiff

No appearance for the Defendant

Court Assistant - Wario

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**J. O. OLOLA**

**JUDGE**