

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

CHUKA ELC APPEAL CASE NO. E009 OF 2021

STEPHEN MUGAO NKUNGUAPPELLANT

VERSUS

JULIA WANJA MUCHEGE.....RESPONDENT

RULING

1. This matter was scheduled for directions on **7th December, 2021** to confirm whether the original record from the subordinate court had been availed and whether the Record of Appeal has been filed and served. On **10th November, 2021**, the Appellant through his advocates on record M/s. Kijaru, Njeru & Co. Advocate filed a Notice of withdrawal of the appeal. When the matter came up before court on **7th December, 2021**, only Mr. Murango Mwenda advocate for the Respondent was present in court having been served to attend. There was no appearance on behalf of the appellant. The Respondent's counsel confirmed to the court that they had been served with the Notice of withdrawal of the Appeal and that the Respondent had no objection to the withdrawal subject to the payment of costs.

2. Order 25 Rule 1 of the Civil Procedure Rules provides as follows:

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 discontinued 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.

3. Under the Civil Procedure Act, "suit" means all proceedings commenced in any manner prescribed. In my opinion, this also includes an appeal. Accordingly, pursuant to the provisions of Order 25 Rule 1 of the Civil Procedure Rules, the Appellant was within his right to withdraw the appeal by filing the Notice of withdrawal herein. It is also apparent that the Respondent had been served with the memorandum of appeal and the Notice of withdrawal, hence the attendance by the Respondent's advocate in court.

4. Having perused the Notice of withdrawal dated **10th November, 2021** and filed on even date, I make the following orders:

a) The Appeal herein is hereby marked as withdrawn with costs to the Respondent.

5. It is so ordered.

DELIVERED IN OPEN COURT AT CHUKA THIS 7TH DAY OF DECEMBER, 2021 IN THE PRESENCE OF:

CA: NDEGWA

Murango Mwenda for the Respondent

N/A for Appellant.

C. K. YANO,

JUDGE.