

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

CIVIL SUIT NO.2 OF 2019

KENYA UNION OF WATER AND

SEWERAGE EMPLOYEES.....1ST PLAINTIFF

ERICK NASOKHO.....2ND PLAINTIFF

MARK WERUNGA.....3RD PLAINTIFF

VERSUS

NZOIA WATER AND SEWAGE CO. LTD.....1ST DEFENDANT

WATER SERVICE REGULATORY BOARD.....2ND DEFENDANT

RULING

This is an application by the Plaintiff Kenya Union of Water and Sewerage Employers and another to withdraw the suit filed against his servant on 20.2.2019.

The reason for the withdrawal is that there have been discussions between the Plaintiff and the 1st Defendant Nzoia Water and Sewerage Company Ltd. Mr.Muruka for the 2nd Defendant Water Service Regulatory Board opposed the application on the ground that the 2nd Defendant was not involved in the discussion forming the basis of withdrawal.

This suit was filed on 20.2.2019 together with application under c certificate of urgency. The same was certified urgent and application was hear on 25.2. 2019. Ruling on the application was delivered on 27.2.2019. The Defendants were directed to file defence and hearing of the suit set for 9.4.2019 when the plaintiff filed this application.

Withdrawal of suits are guided by order 25 Civil Procedure Rules,2010.

Order 25 Rule 2 provides;

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 the 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.

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 (1) Where a suit has been set down for hearing it may be discontinued, or any part of the claim withdrawn, upon the filing of a written consent signed by all the parties.

(2) Where a suit has been set down for hearing the court may grant the plaintiffs 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.”

On application this court may grant leave to the Plaintiff to withdraw this suit upon such terms as it thinks fit in favour of costs or filing of further suit. I have considered the application and reasons. There was no such disclosure of the discussion between plaintiff and 1st Defendant, which I think was necessary as this was a suit for and on behalf of the members of the union. I therefore grant leave to the Plaintiff to withdraw the suit against the defendants with costs to the Defendant and to avoid abuse of the court process order that the Plaintiff should not file such suit against the defendants on the same claim as in this suit.

Dated and Delivered at **BUNGOMA** this **18th** day of **June**, 2019.

S.N. RIECHI

JUDGE