



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MIGORI

ENVIRONMENT AND LAND CASE NO. 12 OF 2017

SAMUEL NYABICHERE MOCHOMERSON....PLAINTIFF/APPLICANT

VERSUS

DANIEL SERERIA MAKARA

JACOB GESASE MARWA

MUSA MARWA

RIOBA MARWA.....RESPONDENT/DEFENDANTS

RULING

1. The Plaintiff/Applicant **SAMUEL NYABICHERE MOCHOMERSON** filed a Notice of Motion dated 7/2/2017 under certificate of urgency pursuant to Sections 1A,1B and 3A Civil Procedure Act as read with Orders 51 and 40 of the **Civil Procedure Rules, 2010**. He is seeking an order of temporary injunction against the Defendant/Respondents in respect of **LR. NO. BUKIRA BWISABOKA/852**. He is represented by Mr. Mwita Kerario counsel instructed by Kerario Marwa and Company Advocates.

2. The Defendant/Respondent namely **DANIEL SERERIA MAKARA, JACOB GESASE MARWA, MUSA MARWA** and **RIOBA MARWA** have not responded to the application as they were apparently not served. They are not in court today.

3. The Notice of Motion application is for mention today. The Plaintiff/Applicants counsel has applied to abandon the application and it be marked it as withdrawn. He has informed the court that it has been overtaken by events and the orders sought are not necessary. He has sought leave of the court to amend the plaint and proceed with the main suit.

4. I have studied the Notice of Motion application and the prayer by the Plaintiff/Applicant counsel, Mr. Mwita Kerario. The law allows a party to withdraw a matter if he or she deems it fit to do so as judicially recognized in the case of **Council of Governors –Vs- Senate & Anor (2014) KLR –SCK**. Moreover, even a suit can be terminated by way of Notice of withdrawal: see **PIL KENYA LTD VS. OPPONG (2009) KLR 442 at 450**.

5. The Plaintiff/Applicant has sought to withdraw the application filed on 7/2/2017. He has given reasons for it's withdrawal including intention to proceed with the main suit. Furthermore, **Article 159 (2) (b) and (c) of the Constitution of Kenya 2010** is very relevant to the instant application for withdrawal.

6. I find the application to withdraw Notice of Motion dated 7/2/2017, merited. I accordingly allow it with no orders as to costs.

7. I, therefore, make the following orders;-

a) Notice of Motion dated 7/2/2017 be and is hereby marked as withdrawn with no order as to costs.

b) The Plaintiff/Applicant is granted leave to amend plaint and serve the Defendant/Respondents

c) Mention on 4/4/2017 for directions.

GEORGE M.A. ONGONDO

JUDGE

Delivered, Signed and Dated in open Court at Migori this 15th day of March 2017.

In the presence of :-

Mr. Mwita Kerario counsel for the Plaintiff/Applicant

Non appearance for the Defendant/Respondents

Court Assistant - Tom