



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 48 OF 2019

NURU CHEPLETING CHOGE.....PLAINTIFF

VERSUS

RAJAB KIPKOSGEI MAGUT.....1ST DEFENDANT

UASIN GISHU LAND REGISTRAR.....2ND DEFENDANT

THE HON. ATTORNEY GENERAL.....3RD DEFENDANT

RULING

[DEPUTY REGISTRAR'S REFERENCE OF 19TH AUGUST, 2020]

1. The record confirms that when the learned Counsel for the parties appeared before the Deputy Registrar on the 19th August, 2020 for a scheduled mention, the issue of whether the Defendants were entitled to costs following the withdrawal of the suit by the Plaintiff arose. That after hearing the submissions by Counsel, the Deputy Registrar directed as follows;

“...The issue of costs raised by Mr. Isiji is a substantive one and can only be addressed by the Judge substantively. In the premises, I direct that the matter be placed before Court 1 on 21st September, 2020 for directions.”

2. That on the 21st September 2020, **Mr. Isiji, Mathai and Wabwire**, the learned Counsel for the Plaintiff, 1st Defendant, 2nd and 3rd Defendants respectively, made their submissions on the matter. That the learned Counsel for the Plaintiff submitted that their notice to withdraw the suit was granted without an order on costs. That thereafter, Counsel for the 1st Defendant filed their bill of costs without first moving the Court for costs to be granted. That the bill of costs should not be entertained without a formal application for costs being filed, heard and granted. That Mr. Mathai, learned Counsel for the 1st Defendant submitted that their request for judgment for costs pursuant to **Order 25 Rule 3 of the Civil Procedure Rules** was made and granted, after which they filed the bill of costs for taxation. That it was during taxation that Counsel for the Plaintiff raised an objection which has no basis. That the matter should be returned to the Deputy Registrar. The learned Counsel for the 2nd and 3rd Defendants submitted that **Order 25 Rule 3 of the Civil Procedure Rules** requires an application for judgment on costs should be made to the Deputy Registrar and not the Judge.

3. The Court has carefully considered the learned Counsel's submissions, the record and come to the following findings;

(a) That this suit was commenced by the Plaintiff through their Complaint dated the 2nd April, 2019 and filed on the 5th April, 2019. That the 1st Defendant entered appearance through M/s Mathai Maina & Company Advocates vide the Memo dated the 18th April, 2019 and filed on the 24th April, 2019. That the statement of defence of even date was also filed on the 24th April, 2019. That the 2nd and 3rd Defendants also filed their Memo of appearance dated the 14th May, 2019. The 1st Defendant then filed the list of documents, and a Notice of Motion both dated the 11th November, 2019 on the 12th November, 2019 seeking for Plaintiff's suit to be struck out with costs. That on the same date, the Plaintiff filed undated notice to withdraw their entire suit against all Defendants. That the record confirms that the Plaintiff's notice to withdraw the suit was entered and endorsed by the Deputy Registrar on the same date, 12th November, 2019.

(b) That the record further confirms that a **“Request for costs under Order 25 Rule 4”** dated the 26th November, 2019 was filed on the same date vide receipt number 0673661. The request was entered and endorsed by the Deputy Registrar on the 27th November, 2019. That it is apparent the 1st Defendant's bill of costs was filed on the 26th November, 2019 which is the same date the request for costs was filed. That it is therefore erroneous for Counsel for the Plaintiff to claim that the request for costs was not endorsed as the record shows otherwise.

(c) That **Order 25 of Civil Procedure Rules** provides for “*Withdrawal, Discontinuance and Adjustment of Suits*”. That Rule 1 deals with withdrawal of suit by the Plaintiff before the suit is set down for hearing. The rule requires the notice to withdraw to be filed and served on all parties. That **Rule 2** deals with discontinuance of a suit which has been set down for hearing. That the discontinuance must be by consent of all the parties or with the leave of the court. That **Rule 3** of the said order provides as follows;

“3. Upon receipt in writing by any defendant, the registrar shall sign for the costs of a suit which has been wholly discontinued and any defendant may apply at the hearing for the costs of any part of the claim against him which has been withdrawn.”

That the foregoing provision leaves no doubt that the application for judgment on costs in a suit that has been withdrawn or discontinued should be made before the Deputy Registrar and not the Judge. That **Order 49 of Civil Procedure Rules** that provides for the Special Powers of Registrars at **Rule 7(b) (XI)** reads as follows;

“7.(1) The Registrar may –

(a)

(b) Hear and determine an application made under the following orders and rules –

(i)

(ii)

(iii)

(iv)

(v)

(vi)

(vii)

(viii)

(ix)

(x)

(xi) Order 23, 24, 25, 26, 27, 28, 30, 31 and 33; and

(xii)

That provision goes to confirm that the applications under **Order 25 of the Civil Procedure Rules**, like the one for judgment for costs in withdrawn suits, falls under the jurisdiction of the Deputy Registrar of this Court and need not be referred to the Judge.

(d) That having confirmed as in (b) above that the 1st Defendant on 26.11.2019 made a request for judgment for costs which was entered and endorsed by the Deputy Registrar on the 27th November, 2019, then they were in order to file the bill of costs for taxation and the Plaintiff’s counsel’s objection is misplaced. The 1st Defendant must have incurred expenses in instructing Counsel, through whom the Memo of appearance, statement of defence, list of documents and Motion to strike out the suit, were filed among others. That the parties should proceed with the taxation of the bill of costs pending before the Deputy Registrar. The Plaintiff will meet the Defendants’ costs.

Orders accordingly.

Delivered virtually and dated at Eldoret this 28th day of October, 2020.

S. M. KIBUNJA

JUDGE

In the presence of:

Plaintiff Absent.

Defendants Absent.

Counsel: Mr. Mathai for the Plaintiff.

Mr. Isiji for the 1st Defendant.

Mr. Kuria for the 2nd and 3rd Defendants.

Court Assistant: Christine

and the Ruling is to be transmitted digitally by the Deputy Registrar to the Counsel on record through their e-mail addresses.