



Murgor & another v Choge (As the Administrator of the Estate of Kipchoge Arap Biego - Deceased) (Environmental and Land Originating Summons E040 of 2022) [2025] KEELC 6518 (KLR) (30 September 2025) (Ruling)

Neutral citation: [2025] KEELC 6518 (KLR)

REPUBLIC OF KENYA

**IN THE ENVIRONMENT AND LAND COURT AT KAPSABET
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E040 OF 2022**

GMA ONGONDO, J

SEPTEMBER 30, 2025

**IN THE MATTER OF AN APPLICATION UNDER SECTION 17,30 AND
38 OF LIMITATION OF ACTIONS ACT, CAP 22 LAWS OF KENYA.**

AND

**IN THE MATTER OF SECTION 28 AND SECTION 30 OF THE
REGISTERED LAND ACT, CAP 300 LAWS OF KENYA (NOW REPEALED)**

AND

IN THE MATTER OF LAND REGISTRATION ACT AND THE LAND ACT, 2013

AND

IN THE MATTER OF THE ENVIRONMENT AND LAND COURT ACT, 2012

AND

**IN THE MATTER OF ORDER 37 RULE 7 & 8 OF THE CIVIL PROCEDURE RULES, 2010
AND SECTION 1A, 1B, SECTION 3 & 3A AND SECTION 5 OF CAP 21, LAWS OF KENYA**

AND

IN THE MATTER OF LAND PARCEL NO. NANDI/NDUBENETI/198

AND

**IN THE MATTER OF AN ORDER THAT ANTHONY JOSEPH MURGOR
AND ATHANAS KITARBEI ARUSEI HAVE ACQUIRED THE WHOLE OF
THE SAME BY WAY OF ADVERSE POSSESSION AND BE VESTED IN THEM.**

BETWEEN

ANTHONY JOSEPH MURGOR 1ST PLAINTIFF

ATHANAS KITARBEI ARUSEI 2ND PLAINTIFF

AND



JOSEPH KIPKORIR CHOGE DEFENDANT
AS THE ADMINISTRATOR OF THE ESTATE OF KIPCHOGE ARAP BIEGO -
DECEASED

RULING

1. The plaintiffs through Kipkosigei Choge and Company Advocates, instituted this suit by way of an originating Summons dated 6th December 2022 for the orders which include;
 - a. That this Honourable Court declares that the Registered Proprietor's interest, his Successors in title, the Respondent as the Administrator of the Estate of the Registered Proprietor, or whomsoever claiming through him that may be and or may have been registered as the proprietor(s) of the whole Nandi/Ndubeneti/198 occupied, possessed and used by the Applicants, be extinguished.
 - b. That, the Honourable Court be pleased further to Order and direct that the whole suit land Nandi/Ndubeneti/198 be vested on the Applicants and the register be rectified to that effect.
2. Mr Kipkosigei Choge leaned counsel for the Plaintiffs informed the court that the plaintiffs are unresponsive and absent herein. In that regard, he has sought to have the suit marked as withdrawn with no orders as to costs.
3. It is well settled that a party has the liberty to withdraw a matter and it cannot be taken away hence, the court has to allow a party who has approached the court to withdraw such a matter; *Lelli-vs- Kenya Medical Training College & 2 others* Petition 10 of 2021 {2021} KESC 21 KLR (Civ).
4. Moreover, no appearance of prejudice on the part of the defendant who has never entered appearance herein; see *Lelli case (supra)*.
5. In the circumstances, the plaintiffs' counsel had advanced good reasons for the withdrawal of the suit. The court has the discretion to allow the withdrawal.
6. It is evident that no bad faith has been demonstrated by the plaintiffs to withdraw the suit with no orders as to costs; see *Oscar Oluoch Ouma Abote-vs-Loice Akoth Kawaka & 4 others* (2022) eKLR.
7. In the foregone, the plaintiffs' withdrawal of the suit is meritorious.
8. Thus, the present suit generated by an originating summons dated 6th December 2022, is hereby marked as withdrawn.
9. Given the nature of the suit, the circumstances and taking into account the proviso to section 27 (1) of the *Civil Procedure Act* Chapter 21 Laws of Kenya, *Abote case (supra)* and the holding in *Jasbir Singh Rai & 3 others vs Tarlochan Singh Rai Estate & 4 others* (2014) eKLR, I make no orders as to costs.
10. It is so ordered.

DATED AND DELIVERED AT KAPSABET THIS 30TH DAY OF SEPTEMBER 2025.

HON. G M A ONGONDO

JUDGE

In the presence of;



1. Mr K Choge learned counsel for the Plaintiffs
2. Walter, Court Assistant

