



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

ELC CASE NO. 97 OF 2016

CAROLINE RASOA KHISA.....PLAINTIFF

VERSUS

LAWRENCE KUNDU MUKUBUYI.....1ST DEFENDANT

FRED MWANGALE.....2ND DEFENDANT

RULING

1. The plaintiff in this suit filed a notice of withdrawal of suit on **7/11/2018** and orally applied to withdraw the suit on **28th November, 2018**. All that remained was the issue of costs.
2. The plaintiff had filed the suit on the **8th June 2016** seeking a declaration that the sale of a half-acre plot on **Kananachi "A" Farm** was illegal and an injunction to restrain the defendants from interfering with the plaintiff's quiet possession of the same.
3. An order to compel the 1st defendant to reconstruct the matrimonial home and return the plaintiff's personal belongings, household and farming items taken away from the house was sought.
4. The 1st defendant averred that there was no marriage between him and the plaintiff, but that she was only a lover and that the suit land was purchased by him before their relationship began.
5. The 1st defendant filed a defence on the **6th November 2017**.
6. I have perused the record and found no defence filed by or on behalf of the 2nd defendant. This matter was allocated a hearing date by this court in the absence of the 2nd defendant's defence.
7. I have considered the circumstances of this case. It arose out of perception by the plaintiff that she was entitled to the land and that there was a matrimonial relationship between the plaintiff and the 1st defendant.
8. The 1st defendant does not deny that there was a love relationship between him and the plaintiff.
9. The suit was not tried on its merits for the reason that on the **28th November 2011** the plaintiff appeared in person and informed the court that she was unable to pay an advocate and withdrew the suit. The true facets of that relationship will never be known. However parties are encouraged to resolve their dispute amicably by this court. It is an approach already entrenched in the rubric of our Constitution under **Article 159 (2) c**. It can only be hoped that the differences between the plaintiff and the defendant will be finally resolved by this withdrawal of suit. Consequently, I find no need of saddling any of the parties with the burden of costs after the rigours of this conflict.
10. Therefore, I hereby order that each party will bear their own costs of the suit.

It is so ordered.

Dated, signed and delivered at Kitale on this 29th day of January, 2019.

MWANGI NJOROGE

JUDGE

29/01/2019

Coram:

Before - Hon. Mwangi Njoroge, Judge

Court Assistant - Picoty

N/A for the applicant

N/A for the respondent

COURT

Ruling read in open court.

MWANGI NJOROGE

JUDGE

29/01/2019