



THE JUDICIARY



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ELC CASE NO. E018 OF 2024

TETO MOMPOSHI.....
PLAINTIFF

(suing on behalf of the estate of Simintei Ole Momposh-Deceased)

VERSUS

JOHN LEITATO RONKO.....1ST
DEFENDANT

DANIEL KIPAILOI MOMPOSHI.....2ND
DEFENDANT

CAPEFILED LIMITED..... 3RD
DEFENDANT/APPLICANT

LAND ADJUDICATION OFFICE, NAROK..... 4TH
DEFENDANT

LAND REGISTRAR, NAROK NORTH..... 5TH
DEFENDANT

RULING.

1. The Plaintiff herein filed this suit dated **30th July 2024**, and sought for Judgment against the Defendants herein jointly and severally. Among the prayers sought is a declaration that the 1st and 2nd Defendants registration as proprietors of the land parcel known as **Cis Mara / Ol Kinyei / 815**, from the deceased to themselves was **procedurally fraudulent**

and **otherwise illegal, irregular** and consequently **null** and **void**.

2. Subsequent to the Plaint, the Plaintiff also filed **Notice of Motion Application** seeking Interim Orders of Injunction, pending the hearing and determination of the suit. The said Interlocutory Application is dated **30th July 2024**.
3. The suit is opposed by the Defendants, and so was the said **Interlocutory Application**, which was canvassed by way of written submissions. On **5th December 2024**, the court delivered a Ruling in respect of the said Interlocutory Application, and granted temporary Orders of injunction to restrain the **3rd** and **5th** Defendants from disposing, and or encumbering the suit property known as **Cis Mara/ Olkinyei/ 815**.
4. After the above Ruling, the matter was fixed for mention for **Pre-Trial Directions (PTC)**. Thereafter, the matter has come to court severally for **Pre-Trial Directions (PTC)**, wherein all the advocates are always present. The parties were granted more time to comply with **Order 11** of the **CPR** pending the fixing of the suit for main trial.
5. On **9th July 2025**, when the parties appeared before the Deputy Registrar of this court, **Mr Willy Enock** for the 3rd Defendant/Applicant informed the court that he had filed an Application dated **4th April, 2025** which he intended to prosecute first. The Application was fixed for hearing before this court for **9th October 2025**.

6. On **9th October, 2025**, the Advocates present were **Mr Okinyi** for the Plaintiff who informed the court that he had fully complied with **Order 11** of **Civil Procedure Rules** and urged the court to set the matter down for hearing. **Mr Onduso** for 1st and 2nd Defendants was also present. **Mr Ligami** for 3rd Defendant/Applicant informed the court that he was ready to proceed with the Application dated **4th April 2025**, which sought for **stay** of these proceedings until full payment of costs of the withdrawn suit.

7. **Mr Okinyi** for the Plaintiff informed the court that he was opposed to the said application, though he had not filed any response to the said Application. **Mr Onduso** too had not responded to the Application, dated **4th April 2025**.

8. The Application is thus considered by this court as an opposed.

9. The Application in issue is dated **4th April 2025**, which is brought under **Order 25 Rule 3** of the **Civil Procedure Rules, Sections 1A, 1B** and **3A** of the Civil Procedure Act, wherein the 3rd Defendant/Applicant has sought for;

- i. **Orders of stay of these proceedings pending the hearing and determination of the 3rd Defendant's/ Applicant's Bill of Costs dated 25th September 2024.**

- ii. ***Further or such other orders as the court may deem fit and just to grant.***

10. This application is anchored on various grounds; among them; That the Plaintiff had filed a similar suit being **MCELC/ E036 /2024: TETO OLE MOMPOSHI VS CAPEFIELD LTD**, at **Narok Chief Magistrates Court**, which suit was later withdrawn with costs to the Applicant herein on **26th September 2024**; That the applicant has incurred costs which ought to be borne by the Plaintiff herein; that the suit at the lower court was **filed** on **20th March 2024**, and was **withdrawn** on **30th July 2024**; thereafter, the Plaintiff proceeded to file the instant suit in this court; that in the withdrawn suit, the 3rd Defendant/Applicant had **Entered Appearance**, and filed a Defence, and thus incurred costs; that after the said withdrawal of the suit at the lower court, the 3rd Defendant/Applicant applied for taxation of costs at the lower court, and the said taxation is yet to be determined; that the filing of a subsequent suit is subjecting the 3rd Defendant/Applicant to further costs, and the Bill of Costs of the withdrawn suit ought to proceed and be determined first before this suit is heard and determined; further that the 3rd Defendant/Applicant stands to suffer financial loss in the event the suit is allowed to proceed; that it is in the interest of justice that the court do allow this application.

11. The Application is also supported by the Affidavit of **Yakubu Oitayu Nkadayo**, a Director of the 3rd Defendant,

who reiterated most of the grounds in support of the Application.

12. The court has considered the instant Application, the grounds in support of the same and the relevant provisions of law as cited by the Applicant and renders itself as follows;

13. Order 25 rule 3 of Civil Procedure Rules states that the Registrar will sign a Judgment for the costs of a **discontinued suit** upon the written request of any Defendant. Alternatively, any defendant can apply at the hearing for the costs of any part of the claim that has been withdrawn.

14. The 3rd Defendant/Applicant herein has applied for costs of the withdrawn suit as per the above provisions of **Order 25 Rule 3 of CPR**. The Applicant has anchored its application upon the above provisions of law, which does not state that a subsequent suit may be stayed.

15. However, **Order 25 Rule 4 of CPR**, allows a court to stay a new lawsuit if it is on the same cause of action as a previously filed and discontinued suit for which costs have not been paid. This rule prevents a plaintiff from starting a new case to avoid paying the costs of a prior, discontinued suit by giving the court the power to halt the new proceedings until the costs of the old ones are settled.

16. It is clear that the court can only stay the subsequent suit if costs have not been paid. The applicant herein has not yet

been awarded costs, but has filed an application for taxation of bill of costs.

17. It is trite that costs are awarded at the discretion of the court. The court that allowed the said withdrawal of the suit has discretion to award costs of the discontinued suit or decline to award the said costs. The 3rd Defendant/Applicant is asking the court to stay this suit, whereas costs **have not yet** been awarded to it in the withdrawn suit. This court cannot find and hold that the Plaintiff herein has failed to pay costs of a **discontinued** suit, and thus the suit herein should be stayed.

18. Further, from the wording of **Order 25 rule 4 of CPR**, it is clear that the court has the **discretion** to order a stay of the new proceedings until the costs of the original, discontinued suit are paid. As usual, this discretion must be exercised judiciously.

19. The Application is also anchored under **Sections 1A,1B** and **3A** of the **Civil Procedure Act**, which provisions of law enjoin this court to facilitate **just** and **expeditious** disposals of matters before court, that are governed by the **Civil Procedure Act**. Further, **Section 3A** of the same Act, grants the court **unfettered discretion** to issue orders that are necessary for the end of justice to be met.

20. The 3rd Defendant/Applicant having participated in the preparation of this suit from **5th December 2024**, when the Ruling on the **Interlocutory Application** was delivered, it

cannot now delay the hearing of the main suit, by seeking to stay the suit on account of non-payment of costs of a **discontinued** suit, and which costs have not yet been awarded, since the **Bill of Costs** application has not yet been determined.

21. For the above reasons, and being guided by **Sections 1A,1B** and **3A**, of the **Civil Procedure Act** the court finds and holds that the necessary Orders herein is for the court to decline the instant application dated **4th April 2025**. Therefore the said application is disallowed with costs being in the cause since the Plaintiff did not respond to the instant Application.

22. Let the suit proceed for hearing and be determined on merit.

Application is dismissed with costs being in the cause

It is so ordered.

Dated, Signed and Delivered at Narok this 13th Day of October 2025

L. Gacheru
Judge

Delivered online in the presence of

Elijah Meyoki - Court Assistant.

Mr. Okinyi for the Plaintiff

Mr. Onduso for the 1st and 2nd Defendant

Mr. Ligami for the 3rd Defendant/ Applicant

L. Gacheru
Judge

