



**In re Estate of Mohamed Bin Seif El Busaidi (Deceased) and KMBBS and ABMBS (Minors)
(Succession Cause 1 of 1936) [2025] KEHC 15101 (KLR) (28 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15101 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
SUCCESSION CAUSE 1 OF 1936**

G MUTAI, J

OCTOBER 28, 2025

IN THE MATTER OF

SAIF SAID SAIF AL BUSAIDY APPLICANT

RULING

1. Warda Said Aboudsulam and Saida About Msalam filed the summons for revocation of grant dated 6th October 2024 seeking to have the grant issued herein revoked. The summons was expressed to have been brought for and behalf of one hundred and sixty residents of plot No 232 XVI, Plot No 219 XVI and Plot No 106 XVI. The said residents from what I have sign a consent form permitting the two applicants to represent.
2. Vide notice of withdrawal dated 14th October 2025 the two applicants evinced an intention to withdraw the summons for revocation of grant dated 6th October and the notice of motion dated 7th October 2015. It was stated that the withdrawal was pursuant to Order 25 Rule 1 of the Civil Procedure Rules as read with the Probate and Administration rules.
3. The summons came for hearing on 27th October 2025. On the said date the two applicants appeared and addressed the court stating that they no longer wished to pursue the two applications and praying that any interim orders in place be discharged. This application was opposed by Mr Egunza, the previous advocate. Mr Egunza urged that as the applicants brought the application in a representative capacity they could not withdraw the application without the consent of the people they represent. The said consent had not been obtained. That being the case the withdrawal was null and void and of no effect.
4. This court read the submission of the parties. Warda and Saida prayed that their application be marked as withdrawn and that interim orders be discharged. Ms Mulongo for the executor agreed with them.
5. On the other hand Mr Egunza opposed the withdrawal. He urged that the purported withdrawal prejudiced other parties. The submissions of Mr Egunza were supported by Ms Akwana for the applicants in a separate summons for revocation of grant.



6. The question before me is whether there is in fall a representative application before the court and whether the withdrawal rendered formal prosecution of the chamber summons dated 6th October 2025 untenable.
7. Order 1 Rule 8 of the Civil Procedure permits the filing of a representative suit. It provides that
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8. It would appear to me as mandatory that a party seeks to represent others in a respective sout the authority of those he claims to represent must be annexed. The authority must be in writing. Order 1 Rule 13 provides that;

“ The authority shall be in writing signed by the party giving it and shall be filed in the case”
9. In the case of Kahind Katura Mwango and Another Vs Cannon Assurance (K) Ltd (2013) e KLR the court held that “indeed Order 4 Rule 4 of the Civil Procedure Rules requires that the plaintiff sues in a representative capacity, the plaint shall state the capacity in which he sues. The plaintiff’s Originating Summons does not state whether we serve community based organization thought the two plaintiff, suing on behalf of 41 Orders is a representative suit or not. That in my view renders the suit incurable detective. As at the time of filing the suit the plaintiffs were under and obligation to show the written entitling them to sue on behalf ofthe applicants cannot just annex a list of inhabitants on whose behalf they purport to be acting which is not signed by and of the person listed herein.”
10. There is no written consent of the 160 alleged parties. In the circumstances I am unable to agree that this is a representative suit.
11. Having made the above determination, I must now decide if the two applications can withdraw the applicants they had filed earlier on.
12. In my view Order 25 Rule 2 (2) of the Civil Procedure Rule permits a party where the suit of application has been set down for hearing to withdrawn it with the leave of the court subject to the issue of costs.
13. Both Said and Walda have filed a notice of withdrawal. This court cannot force them to prosecute a suit application no longer want. This court cannot force a party to pursue a claim against her will any more than it compels married parties to continue living together. In the circumstances allow the notice of withdrawal of the application dated 6th and 7th October 2025. The applications having been withdrawn it follows that the subsisting interim orders in respect of the said applications are discharged.
14. Regarding the alleged parties, they are at liberty to approached the court if it all they remain aggrieved.
15. Costs follow the . I award the petitioners executors the costs.
16. It is so ordered.

DATED AND SIGNED IN MOMBASA, THIS 28TH DAY OF OCTOBER 2025. DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS.

GREGORY MUTAI

JUDGE

In the presence of: -

Arthur – Court Assistant.

