



Simiyu & another (Suing as personal representatives of Khaemba Makhakha Munuya - Dcd) v Makhakha & 2 others (Land Case E005 of 2025) [2025] KEELC 18339 (KLR) (15 December 2025) (Ruling)

Neutral citation: [2025] KEELC 18339 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA
LAND CASE E005 OF 2025
EC CHERONO, J
DECEMBER 15, 2025**

BETWEEN

**MARTHA NEKESA SIMIYU 1ST PLAINTIFF
STEPHEN WANJALA KHAEMBA 2ND PLAINTIFF
SUING AS PERSONAL REPRESENTATIVES OF KHAEMBA MAKHAKHA
MUNUYA - DCD**

AND

**JARED WAFULA MAKHAKHA 1ST DEFENDANT
HILDA NASIMIYU WAFULA 2ND DEFENDANT
GODFREY WANGIRA WAFULA 3RD DEFENDANT**

RULING

1. The plaintiffs/Applicants on 16/07/2025 moved this Honourably Court verbally through their Advocate on record seeking to have this suit marked as withdrawn on grounds that they intend to pursue the judgment in Bungoma ELCLA NO. E34 of 2024 which is related to the instant suit.
2. Though the Defendants/Respondents had no objection, they only sought to be awarded costs of the suit.
3. Section 27 of the *Civil Procedure Act* CAP. 21 Laws of Kenya states as follows;
“27(1) subject to such conditions and Limitations as may be prescribed, and to the provisions of any Law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary



directions for the purposes aforesaid; and the fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers;

Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.”

4. Order 25 Rule 1 & 2 of the Civil Procedure Rules provide as follows;
 1. At any time before the setting down of the suit for hearing the plaintiff may by notice in writing, which shall be served on all parties, wholly discontinue his suit against all or any of the defendants or may withdraw any part of his claim, and such discontinuance or withdrawal shall not be a defence to any subsequent action...”
5. It is trite that a party who wishes to withdraw a suit or action against all or any of the defendants may be allowed to do so subject to payment of costs. From the court record, it is clear that upon instituting this suit on 28/01/2025, the Defendants entered appearance and filed defence on 19/03/2025. Since then, no pre-trial conference has been taken to confirm that the parties have fully complied with order 11 of the civil Procedure Rules and that the case was ripe for hearing. The plaintiff has also given reasonable explanation for the withdrawal of this suit that the judgment in Bungoma ELCLA Case NO. E034 of 2024 has a direct bearing on the instant case and that they intend to pursue the said Judgment/Decree to its logical conclusion.
6. From the provisions of Section 27 of the *Civil Procedure Act*, it is clear that whereas costs of a suit ordinarily follow the event, the court or judge is given discretion to direct by whom and out of what property costs shall be paid, provided that the court and/or Judge shall give good reasons for doing so. The Plaintiff herein has explained that this suit has a direct bearing with the judgment delivered by this Honourable in Bungoma ELCLA NO. E034 of 2024 and that they intend to ventilate their rights in the impugned judgment. That explanation in my view is reasonable. It is also this Court’s view that having withdrawn this suit, judicial time and resources have been saved and the ever ever increasing backlog of cases has also been reduced.
7. It is also important to note that both the plaintiffs and the defendants are close relatives and upon withdrawing this suit, it has gone a long way in restoring the relations and directing that each party to bear their own costs will also bring healing to the parties.
8. The upshot of my finding is that having marked this suit as withdrawn, I hereby order that each party to bear their own costs.
9. Orders accordingly.

READ, DELIVERED AND SIGNED AT BUNGOMA THIS 15TH DAY OF DECEMBER, 2025

HON. E.C CHERONO

ELC JUDGE

In the presence of;

1. Mr. Masiga for the Plaintiffs.
2. 1st Defendant-present.
3. 2nd Defendant-absent.
4. 3rd Defendant-present.
5. Bett C/A.

