

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MIGORI**  
**LAND CASE (OS) NO. E046 OF 2025**

**ROSE AKEYO OJWANG (Suing as the administratrix  
of the estate of JOHN MICHAEL OJWANG  
ONGOMA)....APPLICANT**

**VERSUS**

**MAURICE OUMA OLOO.....1<sup>ST</sup>  
RESPONDENT**

**LUCAS OTIENO JUMA.....2<sup>ND</sup>  
RESPONDENT**

**CAREN AKOTH OMONDI (Sued as the representative of  
MAURICE AKELO ANDERIA).....3<sup>RD</sup>  
RESPONDENT**

**RULING**

**(On withdrawal of an application for injunction after it had  
been set down for hearing and ruling)**

**1.** The Applicant moved this court on an application dated 3<sup>rd</sup> November 2025 for an injunction against the defendants/respondents. The Respondents filed a Replying Affidavit to it. It was sworn by the 1<sup>st</sup> Respondent on 17<sup>th</sup> November, 2025. Prior to that the applicant had filed an Originating Summons in the instant suit. To it the Respondents filed a response by way of a Replying Affidavit also. It appears that after the inter partes hearing of the application for

injunction but before this Court could prepare the ruling, the applicant did much soul searching and arrived at the conclusion that she withdraws it. She then filed a Notice of Withdrawal of the Notice of Motion, hence the instant ruling. The Notice of Withdrawal is dated 1<sup>st</sup> December 2025.

**2.** It is the Notice of Withdrawal this Court is now called upon to consider and determine whether it should or should not be withdrawn. Thus, before me, Notice of Withdrawal of the application dated 3<sup>rd</sup> November 2025, and not the entire Originating Summons. The Applicant cited **Order 25 Rule 1** of the **Civil Procedure Rules, 2010**. It provides that;

*“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.”*

**3.** This court has had occasion to consider a similar action by an applicant, but regarding the withdrawal of an entire claim. The

case is not any different from where a party wishes to withdraw an application that has been set down for hearing. The provision cited above gives the Plaintiff or claimant or applicant the liberty to withdraw his claim or application but upon the fulfillment of the obligation if his matter or application has not been set down for a hearing that he first issues a notice in writing about that intention. The notice should be served on all the defendants or respondents or parties. It, in my view, ought to be served first on all the parties before it can take effect. Upon taking effect, the withdrawal will not serve as a bar to any subsequent action that may be brought by the plaintiff, subject to observance of conditions such as the limitation of time in cases of causes of action.

- 4.** In the instant matter, as it is borne by the record as summarized above, the application had not only been fixed hearing but had been heard and reserved for ruling. Thus, notice of its withdrawal has to be given to all the parties.
- 5.** The process of withdrawal of an application such as the instant one is not any different from that of withdrawal of suits. Thus, the provisions for withdrawal of applications should be

interpreted and applied mutatis mutandis that of withdrawal of suits.

**6.** Therefore, the relevant legal provision where a matter has been fixed for hearing is Order 25 rule 2(1) and (2) of this Civil Procedure Rules. These provide that,

*“(1) Where a suit has been set down for hearing it may be discontinued, or any part of the claim withdrawn, upon the filing of a written consent signed by all the parties.*

*(2) Where a suit has been set down for hearing the court may grant the plaintiff leave to discontinue his suit or to withdraw any part of his claim upon such terms as to costs, the filing of any other suit, and otherwise, as are just.”*

**7.** The first subparagraph provides for situations where the Plaintiff (herein for purposes of the instant application, the applicant) wishes to withdraw a suit already set down for hearing or discontinue it without the involvement of the court, meaning, without waiting for it to be placed before the Judge or Judicial Officer. In such circumstances, the applicant will enter a consent with all the other parties for the withdrawal of this suit, and file it. Upon that happening it will be effective. However,

where the parties do not enter into a consent prior to the hearing, applicant wishing to withdraw the matter will move the court during hearing, for leave to discontinue or withdraw it or any part of the claim. The court will, while doing so, impose conditions as to costs, and or the filing of any other suit subsequently.

**8.** In the instant case, the latter provision is the one the applicant relied on. He did not indicate the reasons why he withdrew application. Of course, he did not indicate whether he had served the Respondents either.

**9.** This court has considered the Notice of Withdrawal. So far, there is no challenge to the withdrawal. What is not clear is whether the Notice has been served or not. Thus, this court cannot stop the parties from withdrawing their issue which is before it since it is their unfettered right to do so. But the court needs to confirm on the date of delivery of this ruling whether service was effected. In **Skyline Sacco Society Ltd v Cheboror (Civil Appeal E007 of 2023)** **[2024] KEHC 9074 (KLR) (25 July 2024) (Judgment)** it was held,

***“From the foregoing, a party who files suit in court has unfettered right to withdraw the suit under Order 25 Rules 1 and 2(1) of the civil procedure Rules. However, under Order 25 Rule 2(2), withdrawal of a suit requires permission of the court and the withdrawal may be subject to terms that the court considers just including payment of costs or filing of any other suit.”***

**10.** In the case of **Nicholas Kiptoo Arap Korir Salat vs. IEBC & 7 Others, Supreme Court Application No. 16 of 2014,** the Supreme Court stated as follows:-

***“A party’s right to withdraw a matter before the court cannot be taken away. A court cannot bar a party from withdrawing his matter. All that the court can do is to make an order as to costs where it is deemed appropriate.”***

**11.** Similarly, in **Beijing Industrial Designing & Researching Institute vs. Lagoon Development Limited [2015] eKLR,** the Court of Appeal stated as follows:-

***“As a general proposition, the right of party to discontinue a suit or withdraw his claim cannot be questioned. There are many circumstances when a Plaintiff may legitimately wish to discontinue his suit or withdraw his claim. The Supreme Court of Nigeria in Abayomi Babatunde vs. Pan Atlantic Shipping & Transport Agencies Ltd & Others SC 154/2002 identified those circumstances to include where;***

- 1. A Plaintiff realizes the weakness of his claim in the light of the defence put up by the Defendant.***
- 2. A Plaintiff’s vital witnesses are not available at the material time and will not be so at any certain future date,***
- 3. Where by abandoning the prosecution of the case, the Plaintiff could substantially reduce the high costs that would have otherwise followed after a full-scale but unsuccessful litigation, or***

**4. A Plaintiff may possibly retain the right to relitigate the claim at a more auspicious time if necessary.”**

**12.** Thus, the applicant is at liberty withdraw the instant application at his instance. However, the imposition of the conditions for withdrawal is at the discretion of the court. Since there is no appearance of the parties at the time of the delivery of this Ruling this Court presumes that the Respondents were served with the Notice of Withdrawal and that is why they did not bother to attend to take the ruling scheduled earlier for today. The applicant shall bear the costs of the application.

**13.** This matter shall be mentioned on 17<sup>th</sup> February 2026 for compliance with Order 11 of the Civil Procedure Rules.

**14.** Orders accordingly.

Ruling dated, signed and delivered virtually via the Teams Platform this 29<sup>th</sup> day of December, 2025.

HON. DR. *IUR* NYAGAKA

JUDGE

In the presence of,

None of the parties

