

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT KWALE

ELC NO. E084 OF 2025

MEENA BHWAGWANDAS PATEL.....1ST
PLAINTIFF

SHARDABEN BHAGWANDAS PATEL.....2ND
PLAINTIFF

- VERSUS -

COUNTY GOVERNMENT OF KWALE.....1ST
DEFENDANT

TRIPPLE H. INVESTMENTS LIMITED.

(wrongly sued as TRIPPLE H. GROUP).....2ND
DEFENDANT

RULING

I. Introduction

1. The matter before this Honourable Court arises from a Notice of Withdrawal dated 1st December 2025, wherein the 1st Plaintiff sought to withdraw the 2nd Defendant from these proceedings on account of the demise of its Director and the Plaintiff's subsequent assumption of ownership of the suit property. The issue for

determination is whether such withdrawal is procedurally sound and whether the Court should record the withdrawal as prayed.

II. Analysis and Determination

2. I have carefully read and considered the pleadings filed by the Plaintiff/Applicant, the Notice of Withdrawal dated 1st December 2025, the responses on record, the relevant provisions of the Civil Procedure Act, Cap. 21 and Rules, and the authorities cited. I have also borne in mind the constitutional imperatives under Article 159(2)(d) of the Constitution of Kenya, 2010, which obligate this Court to administer justice without undue regard to procedural technicalities.
3. In order to arrive at a just, equitable and reasoned determination, this Honourable Court has framed the following four (4) issues for consideration:-

a) Whether the withdrawal of the 2nd Defendant from the proceedings is procedurally sound under Order 25 Rule 1 of the Civil Procedure Rules, 2010.

b) Whether the death of the 2nd Defendant and the Plaintiff's assumption of ownership of the suit property extinguishes the

need for substitution under Order 24 Rule 4 of the Civil Procedure Rules, 2010.

c) Whether the withdrawal prejudices the rights of the remaining Defendant, the County Government of Kwale.

d) Who should bear the costs of the withdrawal.

ISSUE No. a). Whether the withdrawal of the 2nd Defendant from the proceedings is procedurally sound under Order 25 Rule 1 of the Civil Procedure Rules, 2010.

4. Under this sub-title, the Honourable Court shall examine whether the withdrawal of the sole director of the 2nd Defendant from the proceedings is procedurally sound under the provision of Order 25 Rule 1 of the Civil Procedure Rules, 2010. Order 25 provides that:

“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.

2.(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.”

(3) The provisions of this rule and rule 1 shall apply to counter claims”.

5. This provision confers upon a Plaintiff the discretion to withdraw proceedings against a Defendant, subject to the Court's supervisory role to ensure that such withdrawal does not occasion prejudice to the remaining parties.
6. In the case of:- **“Beijing Industrial Designing & Research Institute - Versus - Lagoon Development Limited [2015] eKLR”**, the Court of Appeal stated as follows: -

“The above provision presents three clear scenarios regarding discontinuance of suits or withdrawal of claims. The first scenario arises where the suit has not been set down for hearing. In such an instance, the Plaintiff is at liberty, at any time, to discontinue the suit or to withdraw the claim or any part thereof. All that is required of the Plaintiff is to give notice in writing to that effect and serve it upon the all the parties. In that scenario, the Plaintiff has an absolute right to withdraw his suit, which we agree cannot be curtailed. The second scenario arises where the suit has been set down for hearing. In such a case, the suit may be discontinued or the claim or any part thereof withdrawn by all the parties signing and filing a written consent. In this scenario, the right of the Plaintiff is circumscribed by the requirement that he must obtain the written consent of all the other parties. The last scenario arises where the suit has been set down for hearing but all the parties have not reached any consent on discontinuance of the suit or withdrawal of the claim or any part thereof. In such eventuality, the plaintiff must obtain leave of the court to discontinue the suit or to withdraw the claim or any part thereof,

which is granted upon such terms as are just. In this scenario too, the plaintiff's right to discontinue his suit is circumscribed by the requirement that he must obtain the leave of the court. That such leave is granted on terms suggests that it is not a mere formality."

7. In the present matter, the Plaintiff filed a Notice of Withdrawal dated 1st December 2025, expressly seeking to withdraw the 2nd Defendant, Tripple H. Investments Ltd (wrongly sued as Tripple H. Group), from the proceedings. The grounds advanced are that the sole Director of the 2nd Defendant is deceased and that the Plaintiff has assumed ownership of the suit property. The Court must therefore interrogate whether this withdrawal is consistent with the statutory framework and judicial precedent.
8. The provision of Order 25 Rule 1 Civil Procedure Rules, 2010 empowers the Plaintiff to discontinue proceedings against any defendant by written notice, provided such withdrawal is filed **before** the matter is set down for hearing. The Plaintiff's notice was filed prior to substantive hearing, thereby satisfying the procedural threshold whereas the provision Sections 1A and 1B of the Civil Procedure Act, Cap. 21 enshrine the overriding objective of civil litigation, namely the just, expeditious, proportionate, and

affordable resolution of disputes. Withdrawal of a party who no longer has a substantive role in the litigation is consistent with this objective, as it avoids unnecessary prolongation of proceedings. Further, the provision of Article 159 (2)(d) of the Constitution of Kenya, 2010 obliges courts to administer justice without undue regard to procedural technicalities. Retaining a deceased Director of Defendant in proceedings would elevate form over substance, contrary to this constitutional imperative. The Court is therefore duty-bound to interpret procedural rules in a manner that advances substantive justice.

9. The Plaintiff has demonstrated that the Director of the 2nd Defendant is deceased and that she has assumed ownership of the land. In such circumstances, retaining the 2nd Defendant in the proceedings would be superfluous and inconsistent with the overriding objective of the Civil Procedure Act, Cap. 21. The withdrawal is procedurally sound under Order 25 Rule 1, does not prejudice the 1st Defendant, and aligns with the constitutional command under the provision of Article 159(2)(d) of the Constitution to prioritize substantive justice over technicalities.

10. All said and done, the Court is fully satisfied that the Plaintiff's Notice of Withdrawal is properly grounded in law, supported by precedent, and consistent with the principles of judicial economy and fairness.

ISSUE No. b). Whether the death of the Director of 2nd Defendant and the Plaintiff's assumption of ownership of the suit property extinguishes the need for substitution under Order 24 Rule 4 of the Civil Procedure Rules, 2010.

11. Under this sub-title, the Honourable Court shall examine whether the death of the Director of the 2nd Defendant and the Plaintiff's assumption of ownership of the suit property extinguishes the need for substitution under the provision of Order 24 Rule 4 of the Civil Procedure Rules, 2010. Order 24 Rule 4 (1) of the Civil Procedure Rules, 2010 provides:

“Where one of two or more defendants dies and the cause of action does not survive or continue against the surviving

defendant(s) alone, the suit shall abate as against the deceased defendant.”

12. This provision is designed to address situations where the death of a Defendant interrupts the continuity of proceedings. The rule ensures that litigation does not proceed against a non-existent party, while at the same time safeguarding the rights of the estate where the cause of action survives. The critical question is whether the cause of action survives against the estate of the deceased of the Director of Defendant or whether it is extinguished by subsequent developments. In the present matter, the Plaintiff has assumed ownership of the suit property following the death of the Director of 2nd Defendant. This development alters the legal landscape: the proprietary rights that might have necessitated substitution have already vested in the Plaintiff. Retaining the deceased of the Director of the Defendant in the proceedings would therefore serve no substantive purpose.
13. Further, the Sections 1A and 1B of the Civil Procedure Act, Cap. 21 enshrine the overriding objective of civil litigation, requiring courts to facilitate the just, expeditious, proportionate, and affordable resolution of disputes. To insist on substitution in circumstances

where the Plaintiff has already acquired ownership would undermine this objective by perpetuating unnecessary procedural steps.

14. The director of the 2nd Defendant, Tripple H. Investments Limited, is deceased. The Plaintiff has assumed ownership of the suit property, thereby extinguishing any residual interest that would otherwise necessitate substitution. The cause of action does not survive against the estate of the deceased of the director of the Defendant, since the Plaintiff herself has taken over the proprietary rights. To insist on substitution in these circumstances would elevate a procedural formality into a fatal defect, contrary to the provision of Article 159(2)(d) of the Constitution of Kenya, 2010, which obliges courts to administer justice without undue regard to technicalities. The Court must therefore interpret Order 24 Rule 4 purposively, in a manner that advances substantive justice and reflects the realities of party capacity.

15. The Honourable Court therefore finds that the death of the Director of the 2nd Defendant, coupled with the Plaintiff's assumption of ownership of the suit property, extinguishes the need for substitution under the provision of Order 24 Rule 4 of the Civil

Procedure Rules, 2010. Thus, the withdrawal of the 2nd Defendant is procedurally proper, lawful, and consistent with both statutory provisions and judicial precedent.

ISSUE NO. c). Whether the withdrawal prejudices the rights of the remaining Defendant, the County Government of Kwale

16. Under this sub-title, the Honourable Court shall examine whether the withdrawal of the 2nd Defendant prejudices the rights of the remaining Defendant, the County Government of Kwale.

17. The Court is guided by the provision of Order 25 Rule 1 of the Civil Procedure Rules, 2010, which permits a Plaintiff to withdraw proceedings against any Defendant, subject to the Court's discretion to prevent prejudice to other parties. This discretion is not exercised in a vacuum; it must be informed by the broader principles of fairness and justice. Further, the provision of Sections 1A and 1B of the Civil Procedure Act, Cap. 21 emphasize the overriding objective of civil litigation: the just, expeditious, proportionate, and affordable resolution of disputes. Withdrawal of a party who no longer has a substantive role in the litigation promotes efficiency, avoids unnecessary complication, and ensures that judicial resources are directed towards resolving live disputes.

18. The Court must also remain faithful to the contents of the provision of Article 159 (2)(d) of the Constitution of Kenya, 2010, which obliges courts to administer justice without undue regard to technicalities. This constitutional command requires the Court to focus on substantive rights rather than procedural form, ensuring that the remaining defendant is not disadvantaged by the withdrawal. The Plaintiff has withdrawn the 2nd Defendant on account of death of its sole director and subsequent assumption of ownership of the suit property. The claim against the 1st Defendant, the County Government of Kwale, remains unaffected. The County Government retains full opportunity to contest the Plaintiff's claims, present evidence, and raise defenses.
19. The withdrawal does not extinguish or diminish the cause of action against the County Government. On the contrary, it streamlines the proceedings by focusing the litigation on the party that continues to bear responsibility in law. The County Government's rights to procedural fairness, substantive defense, and access to justice remain intact.
20. Therefore, the Honourable Court finds that the withdrawal of the 2nd Defendant does not prejudice the rights of the remaining as the

sole Defendant, the County Government of Kwale. The cause of action subsists fully against the 1st Defendant, and the withdrawal merely removes a party whose continued participation is unnecessary.

ISSUE No. d). Who should bear the costs of the withdrawal

21. Under this sub-title, the Honourable Court shall examine who should bear the costs of the withdrawal of the 2nd Defendant from these proceedings. It is now well established that the issue of Costs is a discretion of the Court. Costs mean the award a party is awarded at the conclusion of a legal action or proceedings in any litigation. The provision of Section 27 (1) of the Civil Procedure Act, Cap. 21 holds that costs follow the events. By event it means the results or outcome of the legal action or proceedings. See the decisions of Supreme Court ***“Jasbir Rai Singh - Versus - Tarchalan Singh (2014) eKLR”*** and ***Cecilia Karuru Ngayo - Versus - Barclays Bank of Kenya Limited, (2014) eKLR”***.

22. In the case of ***“Hussein Muhumed Sirat - Versus - Attorney General & Another [2017] eKLR”***, the court stated that costs follow the event as a well-established legal principle, and the successful party is entitled to costs unless there are other exceptional circumstances.

23. The withdrawal of the 2nd Defendant was occasioned by death and the Plaintiff's subsequent assumption of ownership of the suit property. These circumstances are not attributable to any fault or misconduct on the part of the Plaintiff. Moreover, the withdrawal does not prejudice the 1st Defendant, who remains a party to the proceedings and retains full opportunity to contest the Plaintiff's claims.

24. In such circumstances, it would be inequitable to saddle the Plaintiff with immediate costs of withdrawal. Equally, awarding costs to the 1st Defendant at this stage would be premature, as the substantive dispute remains unresolved. The most judicious course is to reserve costs to abide the outcome of the main suit.

III. Conclusion & Disposition

25. In long analysis, the Honourable Court has carefully considered and weighed the Plaintiff's Notice of Withdrawal dated 1st December 2025, the statutory framework under Order 25 Rule 1 and Order 24 Rule 4 of the Civil Procedure Rules, 2010, the constitutional imperatives under Article 159(2)(d) of the Constitution of Kenya, 2010, and the judicial authorities cited. The Court has examined

whether the withdrawal is procedurally sound, whether substitution is necessary following the death of the Director to the 2nd Defendant, whether the withdrawal prejudices the rights of the remaining Defendant, and who should bear the costs of withdrawal. Ultimately, in view of the foregoing detailed and expansive analysis, this Court arrives at the following decision and makes the following orders:-

- a) **THAT the withdrawal of the 2nd Defendant, Tripple H. Investments Limited (wrongly sued as Tripple H. Group), from these proceedings is hereby found to be procedurally sound and is accordingly allowed.**
- b) **THAT the suit shall proceed against the 1st Defendant, the County Government of Kwale, only.**
- c) **THAT the withdrawal of the 2nd Defendant does not prejudice the rights of the 1st Defendant, who remains fully entitled to contest the Plaintiff's claims.**
- d) **THAT there shall be a mention on 30th September, 2026 for purposes of conducting Pre - Trial conference pursuant to the provision of Civil Procedure Rules, 2010. There shall be a hearing 16th November, 2026 preferably through Physical means.**
- e) **THAT the costs of the withdrawal of the suit against 2nd Defendant herein shall abide the outcome of the main suit.**

IT IS SO ORDERED ACCORDINGLY.

RULING DELIVERED THROUGH MICROSOFT TEAM VIRTUAL MEANS, SIGNED AND DATED AT KWALE THIS.....4TH.....DAY OFMAY.....2026.

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**HON. MR. JUSTICE L. L. NAIKUNI,
ENVIRONMENT AND LAND COURT
AT
KWALE**

Ruling delivered in the presence of:

- a) Mr. Daniel Disii, the Court Assistant.
- b) Mr. Kirui Advocate for the 1st Defendant.
- c) No appearance for the 1st & 2nd Plaintiffs and 2nd Defendant.