

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

ELC CASE NO. 41 OF 2017

ROSARIA KIRIANKI MBAYA.....PLAINTIFF

VERSUS

ROMANO KIGUNDA M'IKIUGU.....DEFENDANT

RULING

1. This ruling is in respect of the application filed on 19.1.2018 by plaintiff. In it, applicant prays that the court be pleased to review and set aside the orders of 18.12.2017 dismissing the suit.
2. Plaintiff avers that she has obtained certified copies of the withdrawal order in the Nkubu case dated 12.7.2017. She avers the order forms new material facts as evidence that was not available to her at the time of hearing the preliminary objection.
3. I find that the preliminary objection was filed on 2.5.2017. It was hence filed during the pendency of the Nkubu case which case was allegedly withdrawn on 12.7.2017.
4. In my rulings of 18.12.2017 in paragraph 5, I stated as follows: **“I find that even if the suit 136 of 2014 was withdrawn on 12.7.2017 (as alleged by plaintiff), that could not have been the basis of filing the present suit which was filed on 13.2.2017”**.
5. Nothing therefore has changed. As rightly submitted by respondent, the court did take into account the possibility of the withdrawal of the Nkubu suit.
6. In the circumstances, the application is unmerited. The same is dismissed with costs to respondent.
7. **This file is marked as closed.**

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS DAY OF 7th MARCH, 2018 IN THE PRESENCE OF:-

Court Assistant: Janet/Galgalo

Muthoni for applicant

Rimita holding brief for Wamacho for defendant present

HON. LUCY. N. MBUGUA

ELC JUDGE