



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA IN BUSIA**

**ENVIRONMENTAL & LAND COURT**

**ELC NO. 143 OF 2017**

**JANITA MAKOKHA BULUMA..... 1<sup>ST</sup> PLAINTIFF**

**CHARLES WESONGA RICHARD.....2<sup>ND</sup> DECEASED**

**MICHAEL OUMA BULUMA..... 3<sup>RD</sup> PLAINTIFF**

**COSMAS BULUMA.....4<sup>TH</sup> INTERESTED PARTY**

**VERSUS**

**JULIUS ORINA MANWARI..... 1<sup>ST</sup> DEFENDANT**

**ESAU WAMULANDA.....2<sup>ND</sup> DEFENDANT**

**BENARD OKWARA BALONGO.....3<sup>RD</sup> DEFENDANT**

**7/5/2018**

Before: Hon. A. K. Kaniaru – J

CA: Nelson

Parties Present

Interpretation: English/Kiswahili

Manuari for 2<sup>nd</sup> and 3<sup>rd</sup> Defendants

**Court:** The matter is coming for preliminary Objection dated 22/4/2018 and filed on 23/4/2018. Hearing now.

**EX TEMPORE RULING**

I need not retreat to my chambers to make this ruling. It is a simple ruling. The Interested Party has raised a Preliminary Objection but is unable to point out the law he is relying on. Yet a preliminary objection is always based on law and raised pure point of law.

The Plaintiffs intimated intention to withdraw the suit vide a notice of withdrawal dated 22/1/2018. The counsel for the Defendant caused the matter to come up for mention in Court first to formalize the withdrawal and second to get directions from court on the issue of costs. The court has not yet marked the matter withdrawn yet and it is therefore a mis-apprehension on the part of the interested party to treat the matter as withdrawn. The fact of the matter is that the matter still exists until marked withdrawn.

But even assuming that the court had marked it withdrawn, the issue of costs would still arise and the matter would still have to come up in court so that directions on costs can be given. It is not true to say that counsel needed to make a formal application to reinstate the suit. Counsel was perfectly in order to cause the matter to be mentioned in court for directions.

In the premises, the interested party is wrong both in his appreciation of facts and his understanding of law. The Preliminary Objection

herein is found unmeritorious and is dismissed with costs to the Defendant.

Right of Appeal in 30 days.

**A. K. KANIARU - JUDGE**

**7/5/2018**

**In the Presence of:**

1<sup>st</sup> Plaintiff: .....

2<sup>nd</sup> Plaintiff: .....

3<sup>rd</sup> Plaintiff: .....

4<sup>th</sup> Interested Party: .....

1<sup>st</sup> Defendant: .....

2<sup>nd</sup> Defendant: .....

3<sup>rd</sup> Defendant: .....

Counsel of Plaintiff: .....

Counsel of Defendant: .....