



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAKURU**

**ELC NO. 315 OF 2017**

**AGNES WAITWIKI ZAMBETAKIS.....PLAINTIFF**

**VERSUS**

**PERPETUAL WANGECHI WAITERE & ANOTHER**

**P/A KANGETH WAITERE & CO. ADVOCATES.....1<sup>ST</sup> DEFENDANT**

**MENENGAI OIL REFINERIES LTD.....2<sup>ND</sup> DEFENDANT**

**RULING**

1. The plaintiff filed this suit on 25<sup>th</sup> July 2017. She was represented by M/s Onyancha, Nyakundi & Company Advocates at that stage. The defendants entered appearance and took various steps in the matter.

2. On 24<sup>th</sup> May 2018, the plaintiff filed a Notice of Intention to Act in person followed by a Notice of Withdrawal of the suit on 18<sup>th</sup> July 2018. She personally attended court on 19<sup>th</sup> July 2018 and urged the court to allow her to withdraw the suit with no order on costs. Since counsels for defendants did not oppose the withdrawal, I marked the suit withdrawn. The defendants however prayed that they be awarded costs. The plaintiff argued that at the time of filing this suit, she was not aware that the defendants herein had filed another suit against her being Nakuru High Court Miscellaneous Civil Application No. 2 of 2017. I reserved the matter for ruling on the issue of costs.

3. I have now perused the record herein. I note that the plaintiff filed an application on 11<sup>th</sup> June 2018 seeking transfer of this suit to the High Court at Nakuru and further that this suit be consolidated with Miscellaneous Civil Application No. 2 of 2017. The supporting affidavit in respect of the application was sworn by the plaintiff. One of the annexures to the affidavit is a copy of a ruling delivered on 10<sup>th</sup> October 2017 in Miscellaneous Civil Application No. 2 of 2017. A perusal of the ruling reveals that the applicant in the said matter is the plaintiff herein. It is thus not correct for the plaintiff to state that the defendants herein had filed the said matter against her.

4. Costs follow the event. **Section 27(1)** of the **Civil Procedure Act** makes that abundantly clear when it provides as follows:

***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.***

5. The event herein is that the plaintiff has withdrawn the suit. That was her free choice. The plaintiff's argument she was not aware that the defendants herein had filed another suit being Nakuru High Court Miscellaneous Civil Application No. 2 of 2017 against her does not come to her aid. She was in fact the applicant in the said miscellaneous application. I see no good reason to deprive the defendants of costs. In the circumstances, cost of the suit and interest thereon are awarded to the defendants.

**Dated, signed and delivered in open court at Nakuru this 31<sup>st</sup> day of July 2018.**

**D. O. OHUNGO**

**JUDGE**

In the presence of:

Ms Agnes Waitwika Zambetakis the plaintiff present in person

No appearance for the 1<sup>st</sup> defendant

Mr Langat holding brief for Mr Situma for the 2<sup>nd</sup> defendant

Court Assistants: Gichaba & Lotkomoi