



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ELC PET. NO. 24 OF 2017

KIROKET OLE PUNYUA.....PLAINTIFF/APPLICANT

VERSUS

UMASH OLE MWANIK.....1ST RESPONDENT

THE COUNTY DIRECTOR OF ADJUDICATION

AND SETTLEMENT NAROK.....2ND RESPONDENT

THE HON. ATTORNEY GENERAL.....3RD RESPONDENT

RULING

The application before me is the Notice of Motion dated 17th February, 2018 which is brought under Order 25 Rule 4 of the Civil Procedure Rules in which the Applicant sought to stay the proceedings in the matter pending the Petitioner settling in full all costs awarded to the 1st Respondent/Applicant in Narok High Court Environment and Land Court No. 130 of 2017 which was withdrawn with costs on 23rd October, 2017.

The application was based on the provisions of Order 25 (4) of the Civil Procedure Act and on the grounds that the cause of action is a previously discontinued case as the current petition and the 1st respondent is subjecting the 2nd Respondent (Applicant) to further financial expense.

The Application was also supported by the Affidavit of the Applicant in which he deponed that the Petitioner is yet to pay him costs that arose prior to the withdrawal of the Originating Summons in Narok Elc No. 130 of 2017.

The Application was opposed by the Respondent by way of a replying affidavit in which he deponed that whereas it is true that he withdrew his suit being Narok Elc No. 130 of 2017 he was willing and ready to pay the costs arising out of the withdrawal but the applicant has not served him with a bill of costs or certificate of taxation as required by law.

I have read the application before me and the submissions filed by counsel for the parties.

It is not in dispute that the Respondent had withdrawn a suit which was similar to the present but did not pay costs to the applicant.

The Applicant relying on the provision of Order 25 Rule 4 mounted the instant application to stay the proceedings to compel the respondent pay his costs.

Order 25 Rule 4 provides as herein:-

“If any subsequent suit shall be brought before payment of the costs of a discontinued suit, upon the same, or substantially the same cause of action, the court may order a stay of such subsequent suit until such costs shall have been paid.”

The above order has vested to the court with powers to stay procedures where the same has been awarded arising from a similar cause of action.

I have looked at the withdrawn suit and the current petition and find that the prayers sought are identical. However, as envisaged in the provision of order 25 rule 4 I have not found any evidence by the applicant to show that he indeed after the withdrawal of the suit, filed a bill of costs or obtained a certificate of taxation in which the respondent has failed and refused to settle and in the circumstances, I find in the

absence of the above, the application is premature and I thus dismiss the same with costs.

DATED, SIGNED and DELIVERED in open court at **NAROK** on this **18th** day of **December, 2018**

Mohammed Noor Kullow

Judge

18/12/18

In the presence of:-

Mr Langat for Onduso for the Applicant

Parties

CA:Chuma

Mohammed Noor Kullow

Judge

18/12/18