

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MIGORI

ELCC NO. 88 OF 2017

(Formerly Kisii High Court ELC case No. 87 Of 2015)

FRED ATIENO GENGA.....APPLICANT

VERSUS

BEN WASONGA GENGA.....1ST DEFENDANT

JOHN OMOLLO ALIWA.....2ND DEFENDANT

RULING

1. By a plaint (Fast Track) filed in court on 03.02.2015, the Plaintiff/Respondent has sued the Defendant/Applicant for a restraint order in respect of **Plot No. J7 KOLAL Adjudication Section** and costs of the suit. Initially he filed the suit in person. Presently, Kwanga Mboya and Company Advocates are on record.

2. The Defendant/Applicant , Ben Wasonga Genga is represented by Roch Odhiambo Advocate. He has denied the Plaintiff 's claim and prays for its dismissal in a defence dated 3 /4/ 2015.

3. In an application dated 24/10/2016 by way of Notice of Motion, the Defendant/Applicant has sought to have the plaint struck out. By Notice of Motion dated 14/2/2017, he has also sought a temporary injunction against the Plaintiff/Respondent, substitution of the Defendant/Applicant with Fred Atieno Genga as the Defendant and an order to direct the 2nd Respondent to amend the plaint. The two applications were fixed for hearing today.

4. Mr. Kisia counsel for the Plaintiff/Respondent has applied to have the suit withdrawn with costs to the Defendant/Applicant. Mr. Roch Odhiambo counsel for the Defendant/Applicant, who had sought the suit to be struck out, (**See Nyagah Vs. Nyamu & Anor 1976-80 (KLR 8a)**), has no objection thereto.

5. I find the application to withdraw the suit merited. I accordingly allow it.

G.M.A.Ongondo

JUDGE

Delivered, Signed and Dated at Migori this 13TH day of MARCH 2017.

In the presence of :

Mr. Kisia counsel for Plaintiff/Respondent

Mr. Roch Odhiambo for Defendant/Applicant

Mr. Tom Otieno, Court Assistant