



**Kalu v Mbitha & 4 others (Environment & Land Case
102 of 2016) [2024] KEELC 35 (KLR) (18 January 2024) (Ruling)**

Neutral citation: [2024] KEELC 35 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE 102 OF 2016
FM NJOROGE, J
JANUARY 18, 2024**

BETWEEN

BIRYA KALU PLAINTIFF

AND

JOHNRIC THETHE MBITHA 1ST DEFENDANT

GARAMA KADENGE BIMUHAMBI 2ND DEFENDANT

MELEY MBITHA MUHAMBI 3RD DEFENDANT

CHANGA KADENGE BIMUHAMBI 4TH DEFENDANT

NICHOLAS KABANDO MWANGI 5TH DEFENDANT

RULING

1. The Defendants' Notice of Motion dated March 10, 2023 has been brought under Order 17 Rule 2 (3) of the [Civil Procedure Rules](#) seeking the following orders:
 1. That the Plaintiff's suit against Johnric Thethe Mbitha, Garama Kadenge Bimuhambi, Meley Mbitha Muhambi and Changa Kadenge Bimuhambi sued as dismissed with costs for want of prosecution.
 2. That costs of the application be in the cause.
2. The application is premised on the grounds set out on its face and the supporting affidavit of Johnric Thethe Mbitha the 1st Defendant who deponed that the claim as against the 5th Defendant was compromised by the terms of the Consent Order dated April 11, 2018 which marked the suit against the 5th Defendant as settled. He stated that the 2nd, 3rd 4th Defendants and himself were not parties of the said consent. He further stated that despite the fact that in the said consent the Plaintiff got an alternative parcel of land in addition to the payment of the sum of Kshs. 4,000,000/= he has not



withdrawn the suit against the 1st, 2nd, 3rd and 4th Defendants nor has he taken any steps to prosecute the suit in view of the consent. He averred that it would be just and expedient for the Plaintiff's suit as against the 1st, 2nd, 3rd and 4th Defendants be dismissed with costs for want of prosecution.

3. The Plaintiff filed a replying affidavit in response stating that the Application is misplaced and wrongly before the court as the suit between the 5th Defendant and himself was settled under the terms of the consent and that the matter between the 1st, 2nd, 3rd, 4th and himself was also marked as settled on 1st March 2022 with no orders as to costs.

Disposition

4. The application was disposed of by way of written submissions which I have taken into account. Upon a cursory perusal of the court file, I do note that on March 1, 2023 in presence of counsel for all parties herein, the matter was marked as settled. This order has not been vacated, varied or set aside. I do not see the relevance of the instant Application as the same has been overtaken by events. Consequently, the Notice of Motion dated March 10, 2023 is hereby dismissed with no orders as to costs. For avoidance of doubt, the orders issued on March 1, 2023 remain in force.

DATED, SIGNED AND ISSUED AT MALINDI ON THIS 18TH DAY OF JANUARY 2024.

MWANGI NJOROGE

JUDGE, ELC MALINDI

