



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CASE NO. 159 OF 2017

MARGARET WAIRIMU MAGUGU.....PLAINTIFF

VERSUS

KARURA INVESTMENT LIMITED.....1ST DEFENDANT

CHIEF LAND REGISTRAR.....2ND DEFENDANT

KAMWERE & ASSOCIATES.....3RD DEFENDANT

THE ATTORNEY GENERAL.....4TH DEFENDANT

NATIONAL LAND COMMISSION.....5TH DEFENDANT

RULING

1. The Plaintiff/Applicant filed a notice of motion dated 19th January 2017 in which she sought injunctive orders against the respondents. The first and third respondents raised separate points of preliminary objection in respect of both the application and the main suit. When this matter was placed before me on 8th March 2017, I gave directions that both the application dated 19th January 2017 and the Preliminary Objections were to be disposed of by way of written submissions. Parties who had not responded to the application were granted leave to do so.

2. When the matter came up for mention on 11th April 2017 to confirm compliance with the court's directions given on 8th March 2017, it turned out that some parties had not complied with the directions. The advocates for the Plaintiff intimated to court that they wished to have the counsel for the third defendant to cease acting for the third defendant in this case on grounds of conflict of interest. The court reiterated its position regarding the directions given on 8th March 2017 but indicated that the Plaintiff was at liberty to bring an application seeking to bar the third defendant from representing his client in this matter.

3. Later on, on 11th April 2017, the Plaintiff filed a notice of motion dated 10th April 2017 seeking an order asking that the firm of Machira & Co. Advocates do cease from acting for the third defendant on grounds of conflict of interest. The court directed this application to be served for inter-partes hearing on 18th May 2017. When the application dated 10th April 2017 came up for hearing, this court was not sitting. The matter was placed before Justice Gitumbi who directed that the matter be mentioned on 31st May 2017. The Advocates for the Plaintiff intimated to court that they wished to withdraw the application

dated 10th April 2017.

4. On 31st May 2017, the Advocates for the Plaintiff applied to have the application dated 19th January 2017 and that of 10th April 2017 withdrawn. Mr. Kago for the Plaintiff indicated to court that they had filed a notice of withdrawal of the application dated 19th January 2017 which had been served upon the defendants.

5. The application to withdraw the two applications was opposed by Mr. Taibjee for the first defendant and Mr. Machira for the third defendant. Mr. Taibjee argued that the application for withdrawal was coming too late in the day after he had opposed the applications and filed submissions in accordance with the directions of the court. Mr. Machira on his part argued that the manner in which the Plaintiff was seeking to withdraw the application was unprocedural. That if there was to be withdrawal then it has to be in accordance with Order 25 Rule 2(1). Mr. Machira argued that there was no written consent by all the parties to have the applications withdrawn.

6. Mr. Kamau for the second and fourth defendants did not oppose the application for withdrawal. In response to the submissions by Mr. Machira and Mr. Taibjee, Mr Kago argued that an application is not a suit and the provisions of Order 25 Rule 2(1) should not apply to applications.

7. I have considered the Plaintiff's application for withdrawal and the opposition to the same by the first and third defendants. Order 25 Rule 2(1) provides as follows:-

2(1) 'where a suit has been set down for hearing it may be discontinued, or any part of the claim withdrawn, upon the filing of a written consent signed by all the parties'

8. A suit is defined in **Section 2 of the Civil Procedure Act** as follows:-

“suit” means all civil proceedings commenced in any manner prescribed

9. In my understanding, Order 25 was not meant to include interlocutory applications brought within a suit which are mainly brought by way of plaints or originating summons or petitions. Interlocutory applications cannot therefore come under Order 25 of the Civil Procedure Rules. Here is a party who has filed two applications which she wishes to withdraw. The reason behind the withdrawal is to expedite the hearing of the main suit. This ought to be encouraged because it furthers the overriding objective under the Civil Procedure Act which is to dispose of cases quickly. This objective cannot be met if the courts were to be bogged down by unnecessary procedural technicalities. A party cannot be forced to proceed with applications which he does not wish to proceed with. I allow the withdrawal of the two applications dated 19th January 2017 and 10th April 2017. Costs of the withdrawn applications shall abide the outcome of the main suit. As regards the Preliminary Objections which were raised touching on the main suit, the same shall be disposed of by way of written submissions.

It is so ordered.

Dated, signed and delivered at Nairobi on this 14th day of June, 2017

E. O. OBAGA

JUDGE

In the presence of:-

Mr. Machira for Mr. Nganga for 1st defendant

Mr. Kamau for 2nd and 4th defendants

Mr. Machira for 3rd defendant

Court Assistant - Hilda