



**REPUBLIC OF KENYA**

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

**MISC. CIVIL APPLICATION NO. 100 OF 2017**

**TRUSTEES OF BAPTIST BIBLE**

**MISSION EAST AFRICA.....APPLICANT**

**VERSUS**

**VITALIS LUMUTI & 52 OTHERS.....RESPONDENTS**

**RULING**

1. Proceedings in this matter were commenced by way of Notice of Motion dated 24<sup>th</sup> March 2017. The application is brought under Order 51 rule 1, 4, and 10 (2) of the Civil Procedure Rules, 2010. The applicant sought an order that the District Land Registrar Nakuru be ordered to remove a restriction and/or caution which had been registered against land parcel numbers NAKURU MUNICIPALITY BLOCK 20/288 and 289.

2. The respondents opposed the application through the replying affidavit of George Morara Opanga filed on 26<sup>th</sup> July 2017. Parties also exchanged written submissions in respect of the application. However, on 27<sup>th</sup> July 2017, the applicant filed a Notice of Withdrawal citing Order 25 of the Civil Procedure Rules, 2010 and thereby withdrawing Notice of Motion dated 24<sup>th</sup> March 2017 with costs. When the matter came up on 31<sup>st</sup> July 2017 to take date of ruling in respect of the Notice of Motion, counsel for the applicant urged the court to mark it withdrawn with costs to the respondents under Order 25 rule 2 (2) of the Civil Procedure Rules, 2010. Counsel for the respondents opposed the withdrawal and argued that Order 25 rule 2 (2) deals with withdrawal of suits and not applications. Counsel thus urged the court to expunge the Notice of Withdrawal from the record and proceed to render a ruling on the Notice of Motion. In effect, the respondents would like the court to determine the application on its merits. Since the respondents address opposing the application, they ultimately wish to have it dismissed with costs.

3. Order 25 rule 2 (2) provides as follows:

***Where a suit has been set down for hearing the court may grant the plaintiff leave to discontinue his suit or to withdraw any part of his claim upon such terms as to costs, the filing of any other suit, and otherwise, as are just.***

4. The word “suit” is defined at section 2 of the Civil Procedure Act to mean “**all civil proceedings commenced in any manner prescribed**”. I understand “all civil proceedings” to include proceedings commenced by way of a Notice of Motion, such as the present proceedings. Such proceedings are not just an application. They actually constitute a suit.

5. When a suit is discontinued, the court is to take care to ensure that no injustice is occasioned to the defendants or respondents. Usually, an injustice may occur if the defendant’s costs are not provided for. In the present case, the applicant has withdrawn the case with costs to the respondents. There will therefore be no injustice to the respondents. In the circumstances, I accept the notice of withdrawal filed by the applicants. Accordingly, this suit is marked withdrawn with costs to the respondents.

**Dated, signed and delivered in open court at Nakuru this 29<sup>th</sup> day of September 2017.**

**D. O. OHUNGO**

**JUDGE**

In the presence of:

Mr. Langat for the applicants

Ms. Chepngetich holding brief for Mr. Wambeyi for the respondents

Court Assistant: Gichaba