



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MIGORI

ENVIRONMENT AND LAND COURT

ELC CASE NO. 537 OF 2017

(FORMERLY KISII ELC CASE NO. 387 OF 2014)

**IN THE MATTER OF APPLICATION FOR THE DECLARATION OF ACQUISITION
POSSESSION OF LAND REGISTERED UNDER THE REGISTERED LAND ACT**

BETWEEN

JAMES OLOO ATITO.....PLAINTIFF

-VERSUS-

SALINA ADHIAMBO NYODEGI.....1ST DEFENDANT

BERNARD OKOTH NYODEGI.....2ND DEFENDANT

RICHARD OTIENO NYODEGI.....3RD DEFENDANT

RULING

1. This ruling is in respect of a Notice of Motion dated **18/2/2016** brought under **Order 17 Rule 2(1) Civil Procedure Rule (Cap 21 Laws of Kenya)** In the Notice of Motion, orders sought are:-

a. Dismissal of the suit for want of prosecution

b. Costs of the application.

2. Mr. Moriasi Osoro counsel is representing the Applicants/Defendants. Mr. G.S. Okoth counsel is on record for the Respondent/Plaintiff.

3. The suit is for hearing today. The application has not been disposed of.

4. Mr. Osoro has informed the court that the Notice of Motion has been overtaken by events. He has applied to withdraw the Notice of Motion with no order as to costs.

5. Nancy Nyarige counsel holding brief for G.S. Okoth Advocate for the Plaintiff/Applicant, has no objection to the withdrawal of Notice of Motion.

6. I find the application for withdrawal merited as even the main suit is set for hearing now.

7. I accordingly mark the Notice of Motion as withdrawn with no order as to costs.

DELIVERED, DATED and SIGNED at MIGORI this 15th day of November 2017.

G. ONGONDO

JUDGE

In presence of :-

Mr. Moriasi Osoro counsel for the Defendant/Applicant

Ms. Nancy Nyarige for Plaintiff/Respondent

Tom Maurice – Court Assistant