



REPUBLIC OF KENYA



KENYA LAW
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**Ngetich v Chepkurui & 2 others (Environment and Land Appeal
E007 of 2024) [2025] KEELC 923 (KLR) (27 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 923 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ITEN
ENVIRONMENT AND LAND APPEAL E007 OF 2024
L WAITHAKA, J
FEBRUARY 27, 2025**

BETWEEN

ALBERT NGETICH PLAINTIFF

AND

JOYCE CHEPKURUI 1ST DEFENDANT

CELIA CHEMA NGETICH 2ND DEFENDANT

LAND REGISTRAR, ELGEYO MARAKWET COUNTY 3RD DEFENDANT

RULING

Introduction

1. This ruling is in respect of the applications dated 13th December, 2024 and 17th December, 2024. The former is by the 1st defendant/applicant while the latter is by the 2nd defendant/applicant.
2. Through the application dated 13th December 2024, the 1st defendant/applicant seeks to strike out the instant suit on the ground that it is subjudice Iten CMC ELC Case No.036 of 2024.
3. Through the application dated 17th December 2024, the 2nd defendant/applicant seeks to strike out the instant suit on grounds that are more or less those taken up by the 1st defendant/applicant. These are: the suit is scandalous, frivolous and vexatious; that the suit is subjudice Iten CMC ELC Case No.036 of 2024; that the suit is brought in bad faith, incompetent, fatally defective and that in the interest of justice the suit be struck out with costs.
4. As can be discerned from the affidavits sworn in support of the applications, the applicants seek to strike out the instant suit on the ground that it is subjudice Iten CMC ELC Case No.036 of 2024.



5. In reply and opposition to the applications, the plaintiff/respondent has, through the affidavits he swore in response to the applications, inter alia deponed that Iten ELC Case No.036 of 2024 was withdrawn/discontinued before the instant suit was filed.
6. Pursuant to directions given on 14th January 2025, the applications were disposed off by way of written submissions.
7. In his submissions filed on 30th January 2025, the 2nd defendant/applicant acknowledges that Iten CMC ELC Case No.036 of 2024 was withdrawn but contends that the procedure provided in the case of Judith Cherono Mosonik (Suing as the administrator of the Estate of Andrew Kiprotich Chepkwony & another vs. Dickson Kipkemoi Kiplagat Changwony & another (2019)e KLR, was not complied with in withdrawing the case. In particular, the 2nd defendant/applicant takes issue with the fact that the instant suit was filed before the suit in the lower court was formerly withdrawn.
8. Although the 2nd defendant/applicant has neither made a case for stay of the instant suit on the ground that he was awarded costs in the withdrawn suit, which have not been paid nor urged the court to stay the suit on the ground contemplated in Order 25 Rule 4 of the Civil Procedure Rules, the 2nd defendant/applicant suggests that this court ought to allow his application on the ground contemplated in Order 25 Rule 4 of the Civil Procedure Rules, that is to say, stay of the suit pending payment of costs awarded in the withdrawn/discontinued suit.
9. In his submissions filed on 17th February 2025, the plaintiff/respondent maintains that the suit in the lower court which forms the subject matter of the defendants' /applicants applications was withdrawn before the instant suit was filed.
10. Based on the provisions of Order 25 Rule 1 of the Civil Procedure Rules, the plaintiff/respondent submits that the applications by the 1st and 2nd defendants lack merit and urges the court to dismiss them with costs to him.

Analysis and determination

11. It is not in dispute that the suit on which the 1st and the 2nd/defendants (applicants) have hinged their case was withdrawn.
12. Whereas through his submissions the 2nd defendant /applicant contends that the applicable law and procedure was not complied with in withdrawing the suit, I note that none of the applicants made that claim or allegation one of the grounds taken up for seeking the order sought. That being the case, based on the provisions of Order 2 Rule 6 of the Civil Procedure Rules which prohibits parties from departing from their pleadings and the general rules regarding pleadings, I decline to consider the application based on that ground being that it amounts to unauthorized departure from the defendants/ pleadings.
13. It is also the considered view of this court that, even if the alleged non-compliance with the applicable procedure of withdrawal/discontinuance of the suit had been taken up by the defendants/applicants as a ground for striking out the instant suit, it would nevertheless, not suffice as a good or sufficient ground for striking out the instant suit. I say so because, the law does not contemplate that mere filing of a suit during the pendency of another suit, between the same parties over the same or similar issues would automatically lead to striking out the latter. In appropriate circumstances, the court may order for stay of one of the suits or consolidation of the suits if moved by the parties to do so.
14. In the circumstances of this case, where the defendants /applicants have not demonstrated that as at the time they filed their application seeking to strike out the instant suit, there existed a suit in the lower



court on which their application could hinge, I find their applications to be ill-advised and lacking in merit. Consequently, I dismiss the applications with costs to the plaintiff/applicant.

15. Orders Accordingly.

DATED, SIGNED AND DELIVERED, AT ITEN THIS 27TH DAY OF FEBRUARY 2025.

L. N. WAITHAKA

JUDGE

Ruling read virtually in the presence of:

N/A for the Appellant/ Respondent

Mr. Mukhabane for the 1st Applicant

Mr. Wanyonyi for the 2nd Respondent

Christine Towett: Court Assistant

