



**Savali v City Oil Kenya Ltd (Cause 462 of 2019)  
[2025] KEELRC 1670 (KLR) (9 June 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1670 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 462 OF 2019**

**S RADIDO, J**

**JUNE 9, 2025**

**BETWEEN**

**SOLOMON MUOKI SAVALI ..... CLAIMANT**

**AND**

**CITY OIL KENYA LTD ..... RESPONDENT**

**RULING**

1. Solomon Muoki Savali (the Claimant) sued City Oil Kenya Ltd (the Respondent) on 15 July 2019, and he stated the Issue in Dispute as:  
Unfair dismissal from employment and unlawful withholding of terminal benefits.
2. The Respondent filed a Response on 29 October 2019, and when the Cause was mentioned on 21 November 2019, the Court directed the parties to file Agreed Issues on or before 6 December 2019 and thereafter get a hearing date from the Registry.
3. The parties did not file the Agreed Issues. Instead, the Claimant filed his Proposed Issues on 13 December 2019. The Respondent filed its Proposed Issues on 13 January 2020.
4. On 18 June 2020, the Claimant filed a Notice of Withdrawal of Suit.
5. There was no action in the Cause until the Court prompted the parties to appear in Court on 6 June 2024. When the parties appeared, the Court set the hearing for 27 November 2024.
6. The hearing did not proceed on 27 November 2024 because the Court was not sitting. The Deputy Registrar rescheduled the hearing to 3 March 2025.
7. The Respondent filed its witness statements on 28 November 2024.
8. When the Cause was called for hearing on 3 March 2025, the Claimant made an oral application to have the Notice of Withdrawal expunged from the record before the hearing could proceed.



9. The Court directed the parties to address the issue by filing and exchanging submissions.
10. The Claimant did not file his submissions within the agreed timelines. The Court directed him to file and serve the submissions before 16 May 2025, and he filed them on 16 May 2025.
11. In the submissions, the Claimant asserted that he erroneously filed the Notice of Withdrawal on the understanding that an out-of-court settlement was likely to arise from the negotiations the parties were involved in at the time.
12. The Claimant also took the view that since the Employment and Labour Relations Court (Procedural Rules) 2016 (replaced by the 2024 Rules) was silent on the filing of a Notice of Withdrawal of suit, then a Notice of Withdrawal was required to be adopted by the Court before taking effect.
13. To support the assertion, the Claimant cited a passage from *Ombech v Public Finance Management Reform & 2 Ors* [2024] KEELRC 2200 (KLR) that:

A Notice of Withdrawal is not necessarily a consent Order. It is filed by the Party that initiated the proceedings sought to be withdrawn. Its adoption as an order of the court does not depend on the concurrence of the adversarial party. The adversarial Party has the liberty to pursue such other orders, for instance, on the costs of the claim, once a Notice of Withdrawal has been endorsed by the Court.
14. The Claimant in the same vein submitted that the Cause was still alive and if it were to be dismissed or struck out, the action would be caught up by the law of limitation, a situation which would prejudice him.
15. The Claimant further asserted that the Respondent stood to suffer no prejudice as it had never raised the question of the Withdrawal during previous Court sessions.
16. The Respondent had filed its submissions on 8 April 2025.
17. The Respondent, drawing from Order 25 Rule 1 of the Civil Procedure Rules, 2010, urged that the right to withdraw a suit was not fettered by any conditions and was an absolute right before the delivery of a judgment.
18. According to the Respondent, the Claimant, having brought the Notice under Order 25 Rule 1 of the Civil Procedure Rules, did not require the permission of the Court to validate the withdrawal since it became effective upon filing.
19. The Respondent urged the Court to follow in the footsteps of the decision in *Allah Bakash Ali 1892 All WN 53 and Beijing Industrial Designing & Research Institute v Lagoon Development Ltd* [2015] eKLR.
20. In this respect, the Respondent cited a passage in *Beijing* to the effect:

The above provision presents three clear scenarios regarding discontinuance of suits or withdrawal of claims. The first scenario arises where the suit has not been set down for hearing. In such an instance, the Plaintiff is at liberty, at any time, to discontinue the suit or to withdraw the claim or any part thereof. All that is required of the Plaintiff is to give notice in writing to that effect and serve it upon all the parties. In that scenario, the Plaintiff has an absolute right to withdraw his suit, which we agree cannot be curtailed.
21. The Notice of Withdrawal under the scenario, the Respondent asserted, could not be revoked, and it cited *George Mwangi Kinuthia v Attorney General* [2015] eKLR and *Charles Kiptarbei Birech v Paul Waweru Mbugua & Ar* [2021] eKLR.



22. The Court has considered the Notice of Withdrawal and submissions and makes the following determinations.
23. One, on 21 November 2019, the Court ordered that a hearing date be set only after the parties had filed Agreed Issues.
24. Two, by the time the parties appeared in Court on 6 June 2024 and scheduled a hearing date, the Cause was not ready for setting down for hearing, despite the parties informing the Court that they had complied.
25. By then, the parties had not filed Agreed Issues as directed on 21 November 2019.
26. Three, the Employment and Labour Relations Court (Procedure) Rules 2016 and 2024 are silent on the trajectory a Notice of Withdrawal of a suit should take, and recourse should therefore be taken from the *Civil Procedure Act* and Rules.
27. Four, Order 25 Rule 1 of the Civil Procedure Rules requires that a Notice of Withdrawal of a suit before it has been set down for hearing should be served on all the parties to the suit.
28. There is no evidence that the Claimant served the Notice upon the Respondent. There must be a policy issue as to why the Rule demands that the other parties be served. Affording them an opportunity to address the Court on issues such as costs is one of the policy considerations.
29. The Respondent herein filed witness statements long after the Notice of Withdrawal had been filed. It informed the Court on 6 June 2024 that it was ready for the hearing. It did not raise any objection before the Deputy Registrar on 27 November 2024 when a hearing date was fixed.
30. In the peculiar circumstances of this case, the Court finds that the Notice of Withdrawal filed in Court on 16 June 2020 did not automatically withdraw the Cause.
31. Before concluding, the Court notes that the delivery of this Ruling was brought forward because the Court will not sit on 26 June 2025.

### **Orders**

32. In light of the above, the Court directs that the Cause proceed to hearing.
33. Costs in the cause.

**DELIVERED VIRTUALLY, DATED AND SIGNED IN NAIROBI ON THIS 9TH DAY OF JUNE 2025.**

**RADIDO STEPHEN, MCI Arb**

**JUDGE**

Appearances

For Claimant E.A. Ochieng & Co. Advocates

For Respondent Busaidy Mwaura Ouma & Co. Advocates

Court Assistant Wangu

