



**Salim & 3 others v Pasta (Environment & Land Case 165 of 2018)
[2024] KEELC 5927 (KLR) (18 September 2024) (Ruling)**

Neutral citation: [2024] KEELC 5927 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE 165 OF 2018
EK MAKORI, J
SEPTEMBER 18, 2024**

BETWEEN

**RASHID MOHAMED SALIM 1ST PLAINTIFF
AHMED MOHAMED SULEIMAN 2ND PLAINTIFF
MOHAMED SULEIMAN SHAZSY (SUING AS TRUSTEES OF THE MAZRUI
COMMUNITY DEVELOPMENT AND WELFARE WAKF LANDS TRUST AND
MEMBERS OF THE MAZRUI COMMUNITY) 3RD PLAINTIFF
MOMBASA CEMENT LIMITED 4TH PLAINTIFF**

AND

ABDUL GAFFUR PASTA DEFENDANT

RULING

1. The application dated 7th June 2024 significantly seeks that leave be granted to the 1st and 3rd Plaintiffs to withdraw Rashid Mohammed Salim's statement and the annexed documents filed and drawn by the law firm of Gichira and Company Advocates, the former advocates acting for the said Plaintiffs.
2. In an affidavit in support of the application, one Rashid Mohammed Salim (1st Plaintiff), deposed on 7th June 2024, avers that, at the time of filing the documents, he had not obtained consent and resolution from the Mazrui Community Development and Welfare Wakf Land Trust to file such statement and documents and that it is imperative that the same be withdrawn and fresh ones be filed.
3. It is averred that having understood the legal implications of his action, it will be fair to allow the application.
4. In opposition to the application, Defendant Abdulgaffur Pasta, in a replying affidavit, deposed on 19th June 2024, states that the first Plaintiff's statement did not require any resolution and is not disputed as to its veracity.



5. The Defendant believes that this is a delaying tactic deployed to stall the matter. Anybody disputing the same should seek to cross-examine the 1st Plaintiff.
6. The issue for the determination of this Court is whether to allow the withdrawal of the said statement and documents at this stage and who should bear the attendant costs.
7. The Court will reckon that this is a 2018 matter that has predominantly been active—not towards a hearing of the main suit but peripheral issues that have drained the Court in writing rulings that do not tend to dispose of the matter.
8. The test here is: If the statement and documents filed are withdrawn, will it prejudice any of the parties? In my view, the answer is no.
9. The Court will grant leave for the withdrawal of the statement and documents filed by the 1st Plaintiff under the following terms:
 - a. The replacement should be done within 14 days.
 - b. The Defendant can respond to the fresh-filed statements and documents within 14 days of service.
 - c. The hearing date to remain as scheduled.
 - d. Costs in the cause.

DATED, SIGNED, AND DELIVERED AT MALINDI VIRTUALLY ON THIS 18TH DAY OF SEPTEMBER 2024.

E. K. MAKORI

JUDGE

In the presence of:

Ms. Shamsa and Mr. Maundu for the 1st, 2nd and 3rd Plaintiffs

Mr. Achoka, for the 4th Plaintiff

Mr. Oluga for the Defendants.

Court Assistant: Happy

