



Botoret Farmers Group v Munialo & 9 others (Environment & Land Case 73 of 2018) [2024] KEELC 13811 (KLR) (17 December 2024) (Ruling)

Neutral citation: [2024] KEELC 13811 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT & LAND CASE 73 OF 2018
CG MBOGO, J
DECEMBER 17, 2024**

BETWEEN

BOTORET FARMERS GROUP PLAINTIFF

AND

PETER MUNIALO 1ST DEFENDANT

FRED KOECH 2ND DEFENDANT

BENARD NGENO 3RD DEFENDANT

AUGUSTIN CHEPKWONY 4TH DEFENDANT

GRACE CHEPKWONY 5TH DEFENDANT

KIKORIR LANGAT 6TH DEFENDANT

WILLIAM MISIK 7TH DEFENDANT

JUDY CHERONO SIRMA 8TH DEFENDANT

SARAH (NBI) 9TH DEFENDANT

JOSEPH ROTICH 10TH DEFENDANT

RULING

1. Before this court for determination is the notice of motion dated 6th June, 2024, filed by the plaintiff/applicant, and it is expressed to be brought under Order 51 Rule 1 of the Civil Procedure Rules and Section 3A & 6 (e) of the Civil Procedure Act seeking the following orders: -
 - a. Spent.



- b. That honourable court be pleased to arrest its taxation ruling in this matter slated for 26/6/2024.
 - c. That the applicant be granted leave to respond to the taxation.
 - d. That the initial notice of withdrawal of this suit be set aside.
 - e. That costs of this application be in the cause.
2. The application is premised on the grounds inter alia that the withdrawn notice is suspicious and a forgery. The application is further supported by the affidavit of Johnson Kimutai Cheruiyot sworn on even date. The plaintiff/ applicant deposed that he never withdrew this matter at all, and that it is a forgery. He deposed that they wish to be given a chance to take part in the said taxation, and that to the best of their knowledge, the withdrawal of the suit was done by a stranger who was not a party to the suit. It was also deposed that no prejudice will be occasioned to the defendants/ respondents if the application is allowed.
3. The 1st to 3rd defendants/ respondents filed their grounds of opposition dated 13th June, 2024 in opposition to the application on the following grounds: -
1. That the applicant herein offends the express provisions of Section 7 of the Civil Procedure Act as a similar application to reinstate this suit was dismissed on 28th March, 2023; hence res judicata.
 2. That the instant application has only interposed to delay and/or frustrate the 1st, 2nd and 3rd defendants' taxation of the Bill of costs dated 5th May, 2021.
 3. That the application herein disclosed no reasonable cause of action, is scandalous, vexatious and otherwise constitutes an utter abuse of the court process and thus ought to be dismissed with costs.
4. The plaintiff/ applicant filed its supplementary affidavit sworn on 25th September, 2024. While reiterating the contents of his replying affidavit, the plaintiff/ applicant deposed that the circumstances under which the suit was withdrawn remains unclear, and that he has given out a sample of his handwriting to the DCI for an expert report. Further, he deposed that he signs documents as Alfred Langat and not as Johnson Cheruiyot (sic).
5. The application was canvassed by way of written submissions. The plaintiff/ applicant filed its written submissions dated 3rd July, 2024. The plaintiff/ applicant stated that it mainly seeks prayers 2 and 3 of the application, and maintained that it has never withdrawn the suit, and that the said withdrawal borders a criminal act. The plaintiff/ applicant went on to submit that the defendants/ respondents have equally opted not to file a response as they have nothing substantial to tell the court.
6. The plaintiff/ applicant submitted that the suit is not res judicata as no evidence has been placed before this court, and further that they were never served with any notice of taxation hence the need for the court to arrest its ruling, and allow them a chance to defend the bill of costs.
7. The 1st to 3rd defendants/ respondents filed their written submissions dated 8th November, 2024 where they raised three issues as listed below: -
- i. Whether the instant application is res judicata.
 - ii. Whether the instant application is scandalous, frivolous, vexatious and is otherwise an abuse of the court process.



- iii. Whether the applicant is entitled to file the instant application after its previous application was dismissed for want of prosecution.
8. On the first issue, the 1st to 3rd defendants/ respondents submitted that the plaintiff/ applicant filed a similar application dated 21st October, 2022, and that the same was dismissed for want of prosecution on 28th March, 2023. They submitted that the issues in that application were similar to the instant application. They also submitted that dismissing the application for want of prosecution amounted to a determination of the application on its merit. They relied on the case of *Njue Njagi v Ephantus Njiru Ngai & another* [2016] eKLR.
 9. On the second issue, the 1st to 3rd defendants/ respondents submitted that the application is vexatious and through its notice of withdrawal of the suit, it voluntarily chose to withdraw the suit, and that it cannot be heard to claim that the suit was withdrawn without their consent as the deponent is the one who personally signed the said notice.
 10. On the third issue, the 1st to 3rd defendants/ respondents submitted that it is not open for the plaintiff/ applicant to file a fresh application based on the same facts and seeking similar reliefs. To buttress on this submission, they relied on the case of *Mumira v Attorney General (Constitutional Petition E007 of 2020)* [2022] KEHC 271 (KLR) (8 April 2022) (Ruling).
 11. The 4th to 10th defendants/ respondents are not opposed to the application as pointed out by Mr. Kenda, the learned counsel. Be that as it may, I have considered the application, the replies thereof and the written submissions filed by the respective parties. In my view, the issue for determination is whether the application has merit.
 12. The plaintiff/ applicant in its submissions pointed out that they specifically seek prayer 2 and 3 of the application. A look at the said prayers reveals that such remedy is not within the jurisdiction of this court to grant but the taxing officer. In any case, the same has been overtaken by events as a ruling was delivered on 17th July, 2024. What is left to determine is on the notice of withdrawal of the suit and whether it should be set aside.
 13. I have perused the record in this matter and note that on 28th March, 2023, the application dated 21st October, 2022 was dismissed for want of prosecution. The said application was seeking reinstatement of the suit, pursuant to the orders of the court issued 2nd December, 2019, which marked the suit as withdrawn. It is my belief that the court acted on the notice of withdrawal dated 11th November, 2019. Ideally and procedurally, the plaintiff/ applicant ought to move the court accordingly to set aside the orders issued on 28th March, 2023, pursuant to Order 12 Rule 7 of the Civil Procedure Rules which provides, “Where under this order judgment has been entered or the suit has been dismissed, the court, on application, may set aside or vary the judgment or order upon such terms as may be just.”
 14. I do agree with the 1st to 3rd defendants/ respondents that the plaintiff/ applicant cannot simply file a fresh application where another application which contained similar issues was dismissed. The procedure guiding the court and litigants are the handmaidens of justice and it is only proper for the plaintiff/ applicant to follow the process laid out in law.
 15. From the above, it is my view that the notice of motion dated 6th June, 2024 does not merit the orders sought. The same is hereby dismissed. Each party to bear its own costs. Orders accordingly.

DATED, SIGNED & DELIVERED VIA EMAIL ON THIS 17TH DAY OF DECEMBER, 2024.

HON. MBOGO C.G.

JUDGE



17/12/2024.

In the presence of: -

Mr. Meyoki Pere – C.A

