

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT FORT PORTAL
CIVIL SUIT NO. 038 OF 2019

NATIONAL WATER AND SEWERAGE CORPORATION ::: PLAINTIFF

5

VERSUS

CHANCE EUGENE ::: DEFENDANT

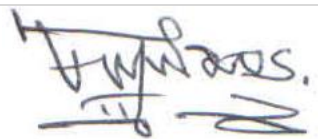
BEFORE: HON. JUSTICE VINCENT WAGONA

RULING

The plaintiff filed this suit on the 30th day of October 2019 seeking a declaration that she is the legal and bona-fide owner of land comprised in FRV KB03, Folio 9 known as Block 60, Plot 293 at Kaburaisoke, Kamwenge District measuring 0.0315 hectares being an access to a reservoir in the area, An order directing the defendant, his agents, assigns or successors in title to open up the access road, a permanent injunction restraining the defendant, his agents, assigns or successors in title from interfering with the plaintiff's use of the suit land, general, exemplary and punitive damages and costs of the suit.

The summons were served and the defendant filed a written statement of defense on 6th November 2019. The plaintiff's counsel later wrote a letter dated 15th August 2022 which was filed and received on court record on 17th August 2022 seeking to withdraw the suit without orders as to costs since the defendant had not filed his written statement of defense.

Court fixed the case for mention on the 2nd day of December 2022 and none of the parties showed up.



Decision.

Order 25 rule 1 of the Civil Procedure Rules provides thus:

5 *The plaintiff may at any time before the delivery of the defendant's defence, or
after the receipt of that defence before taking any other proceeding in the suit
(except any application in chambers) by notice in writing wholly discontinue
his or her suit against all or any of the defendants or withdraw any part or parts
of his or her alleged cause of complaint, and thereupon he or she shall pay the
defendant's costs of the suit, or if the suit is not wholly discontinued the costs
10 occasioned by the matter so withdrawn. Upon the filing of the notice of
discontinuance the costs shall be taxed, but the discontinuance or withdrawal,
as the case maybe, shall not be a defence to any subsequent action.*

Rule 2 provides thus:

15 *Except as in this rule otherwise provided, it shall not be competent for the
plaintiff to withdraw or discontinue a suit without leave of the court, but the
court may, before or at, or after hearing upon such terms as to costs, and as to
any other suit, and otherwise as may be just, order the action to be
discontinued or any part of the alleged cause of complaint to be struck out*

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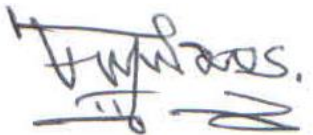
Order 25 rule 1 is very instructive. Where a plaint is filed and served or not served
within the 21 days after issuance of the summons and a matter is withdrawn by the
plaintiff before delivery of the defense, the plaintiff is allowed to withdraw his suit
without leave of court. However, where a suit is filed and the summons are served and
25 a defense is delivered by the defendant, any withdraw must be with leave of court and
the plaintiff should be willing to pay the costs of the suit to the defendant.

It is my view that court may in appropriate cases allow for withdraw without costs where a defense has been delivered by the defendant depending on the nature of the claim and the surrounding circumstances. In this case the defendant after receipt of the summons, filed a written statement of defense on 6thNovember 2019 and the same
5 were endorsed by court on 14thJanuary 2020. The defendant did not bother to pick copies of the defense or serve the same upon the plaintiff to put her on notice that he intended to defend the suit. After the case was fixed for mention, the defendant was unrepresented and did not attend court. The defendant did not demonstrate any interest in defending the suit other than filing a defense on record.

10 I thus order that Civil Suit No. 038 of 2019 be and is hereby withdrawn with no orders as to costs.

The plaintiff had also filed Misc. Application No. 93 of 2019 for a temporary injunction and for an interim injunction. The withdrawal of the main suit renders the applications incompetent. I thus dismiss Misc. Application No. 93 of 2019 and 94 of
15 2019 for being incompetent with no orders as to costs.

I so order



Vincent Wagana

High Court Judge

20 **FORT-PORTAL**

27.02.2023

