



Global Woods Hardware Limited v KCB Bank Kenya Limited & another (Land Case E006 of 2024) [2024] KEELC 5860 (KLR) (Environment and Land) (28 August 2024) (Ruling)

Neutral citation: [2024] KEELC 5860 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VOI
ENVIRONMENT AND LAND
LAND CASE E006 OF 2024
EK WABWOTO, J
AUGUST 28, 2024**

BETWEEN

GLOBAL WOODS HARDWARE LIMITED PLAINTIFF

AND

KCB BANK KENYA LIMITED 1ST DEFENDANT

ONESMUS MACHARIA T/A WATTS AUCTIONS 2ND DEFENDANT

RULING

1. The Plaintiff instituted this suit vide a plaint dated 22nd August 2024 and contemporaneously filed an application of even date seeking inter alia an injunction against the Defendants from selling, disposing off or dealing in any way with L.R No. 27303 (C.R 42227) and L.R No. 1956/462 (C.R 43939) pending the hearing and determination of the suit. The said application was supported by the affidavit sworn by Patrick Mundia Nyamu on the even date.
2. The court upon considering the said application directed that the same be heard by way of oral submissions on 28th August 2024 during the inter parties hearing. However, before the said date of inter parties hearing, the Plaintiff filed a notice of withdrawal of the suit dated 27th August 2024.
3. At common law a plaintiff has an absolute right to discontinue his suit at any stage of the proceedings prior to verdict or judgment. This right has been declared to be substantial. (per C. J. Taft in the matter of Skinner and Eddy Corporation, (1924) 68 Law Ed 912 at p. 914). It is this right that has been given statutory recognition through Order 25 of the Civil Procedure Rules, 2010. The Court of Appeal



in *Beijing Industrial Designing & Researching Institute v Lagoon Development Limited* [2015] eKLR stated:-

“As a general proposition, the right of a party to discontinue a suit or withdraw his claim cannot be questioned. There are many circumstances when a plaintiff may legitimately wish to discontinue his suit or withdraw his claim. The Supreme Court of *Nigeria in Abayomi Babatunde v pan Atlantic Shipping & Transport Agencies Ltd & others*, SC 154/2002 identified those circumstances to include where:

- i. a plaintiff realizes the weakness of his claim in the light of the defence put up by the defendant,
- ii. a plaintiff's vital witnesses are not available at the material time and will not be so at any certain future date,
- iii. where by abandoning the prosecution of the case, the plaintiff could substantially reduce the high costs that would have otherwise followed after a full-scale but unsuccessful litigation, or
- iv. a plaintiff may possibly retain the right to re-litigate the claim at a more auspicious time if necessary.”

4. The Supreme Court in *Nicholas Kiptoo arap Korir Salat v IEBC & 7 Others* S.C APPL NO. 16 OF 2014 held that:

“a party's right to withdraw a matter before the court cannot be taken away. A court cannot bar a party from withdrawing his matter. All that the court can do is to make an order as to costs where it is deemed appropriate.”

5. It is useful to reproduce the provisions of Order 25 of the *Civil Procedure rules*, 2010 which provides for withdrawal, discontinuance and adjustment of suits. It reads: -

“1. At any time before the setting down of the suit for hearing the plaintiff may by notice in writing, which shall be served on all parties, wholly discontinue his suit against all or any of the defendants or may withdraw any part of his claim, and such discontinuance or withdrawal shall not be a defence to any subsequent action.

(1) Where a suit has been set down for hearing it may be discontinued, or any part of the claim withdrawn, upon the filing of a written consent signed by all the parties.

(2) Where a suit has been set down for hearing the court may grant the plaintiff leave to discontinue his suit or to withdraw any part of his claim upon such terms as to costs, the filing of any other suit, and otherwise, as are just.”

6. As acknowledged by the above cited decisions, the right provided under Order 25 Rules 1 & 2 (1) of the *Civil Procedure Rules* is not fettered by any conditions; it is an absolute right which a plaintiff can exercise at his sweet will at any time before the judgment is delivered. In view of the foregoing this court hereby issues the following orders:



- a. The Plaintiff's notice of withdrawal of the suit dated 27th August 2024 is hereby adopted by this court.
- b. The Plaintiff's entire suit is hereby marked as withdrawn.
- c. There shall be no orders as to costs.
- d. The file is closed.

Orders accordingly.

DATED SIGNED AND DELIVERED VIRTUALLY AT VOI THIS 28TH DAY OF AUGUST 2024.

E.K. WABWOTO

JUDGE

