



**Gikama v Ng'ang'a & another (Tribunal Case E1119 of 2022)  
[2024] KERRT 308 (KLR) (29 January 2024) (Ruling)**

Neutral citation: [2024] KERRT 308 (KLR)

**REPUBLIC OF KENYA  
IN THE RENT RESTRICTION TRIBUNAL  
TRIBUNAL CASE E1119 OF 2022  
HK KORIR, CHAIR  
JANUARY 29, 2024**

**BETWEEN**

**JAMES MWANGI GIKAMA ..... APPLICANT**

**AND**

**MARGARET NG'ANG'A ..... 1<sup>ST</sup> RESPONDENT**

**MARY MUSANDI T/A VISCROW ESTATE AGENCY ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The Tenant herein filed a Notice to Withdraw the entire Plaintiff dated and filed on 18<sup>th</sup> October 2022. Counsel for the Respondents objected the notice to withdraw until the rent arrears were paid and contempt purged.
2. I have considered the oral submissions of both parties and find that the only issue for determination is whether the Notice of Withdrawal should be sustained.
3. The law of procedure relating to the parties in civil suits with respect to withdrawal is governed by order 25 rule (1) (2) of the *Civil Procedure Rules*. The Order reads as follows:

“At any time before the setting down of the suit for hearing the Plaintiff may by notice in writing, which shall be served on the 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 (1) Where a suit has been set down for hearing, it may be discontinued or any part of the claim withdrawn. For hearing, it may be discontinued upon the filing of a written consent signed by all parties. (2) where a suit has been set down for hearing, the court may grant the Plaintiff leave to discontinue his suit or withdraw any part of his claim upon such times as to costs, the filing of any suits and otherwise as are just.”



4. In *Beijing Industrial Designing & Research Institute v Lagoon Development Ltd* (*supra*) the court commenting on the above provision, distilled the three circumstances contemplated under the above rule. It stated: -

“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, 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. The second scenario arises where the suit has been set down for hearing. In such a case the suit may be discontinued or the claim or any part thereof withdrawn by all the parties signing and filling a written consent of all the other parties. The last scenario arises where the suit has been set down for hearing but all the parties have not reached any consent on discontinuance of the suit or withdrawal of the claim or any part thereof. In such eventuality, the Plaintiff must obtain leave of Court to discontinue the suit or withdraw the claim or any part thereof, which is granted upon such terms as are just. In this scenario too, the Plaintiff’s right to discontinue his suit is circumscribed by the requirement that he must obtain the leave of the Court. That such leave is granted on terms suggests that it is not a mere formality”. (My emphasis)

5. As acknowledged by the above cited decisions, the right provided under order 25 rules 1 & 2 (1) 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 *Allah Baksh v Niamat Ali* [20] the court described the right as "absolute" and capable of being exercised "without any permission from the court'. However, under the third category, withdrawal requires permission of the court but the plaintiff does not need consent of the defendant.
6. Withdrawal of a suit is itself its end. The right of a plaintiff to withdraw his suit is not a divine right but a right expressly conferred upon him by order 25 and no right is similarly conferred upon him to revoke or rescind the withdrawal. In the same vein, the rules do not confer the court with power to reinstate a suit once withdrawn. Order 25 rule 1 provides that the withdrawal shall not be a defence to any subsequent action. Before me is not a subsequent action, but the same suit.
7. Applying the above principles to the case now under consideration I think the Plaintiff was within his right to withdraw the Plaint subject to service upon the respondent. This is more so due to the fact that the parties to this suit were yet to commence the hearing of the suit.
8. Once the Plaintiff withdraws his suit, the Tribunal becomes functus officio this position was affirmed in the case of; *Smt. Rais Sultana Begam v Abdul Qadir & Others* where the court held that: -

“The consequence of an act of withdrawal is that the Plaintiff ceases to be a Plaintiff before the Court. If he is the only plaintiff and withdraws the whole of the suit, the suit comes to an end and nothing remains pending before the Court, if he withdraws only a part of the suit that part goes out of the jurisdiction of the court and it is left with only the other part. This is a natural consequence of the act; a further consequence imposed by sub rule (3) is that he cannot institute a fresh suit in respect of the subject-matter. He becomes a subject to this bar as soon as he withdraws the suit. It follows as a corollary that he cannot revoke or withdraw the act of withdrawal. If he absolutely barred from instituting a fresh suit, it means that he is absolutely barred from reviving his status as a Plaintiff before the Court.



It stands reason that when on withdrawal the Plaintiff ceased to be a party and the Court ceased to have jurisdiction over the suit and thus became functus officio nothing but a fresh suit can again invest the Court with jurisdiction over it. As far as the withdrawn suit is concerned the suit is at an end and no further proceedings can be taken in it; the suit and the Plaintiff do not exist and no application such as an for revoking the withdrawal can be made in the suit or by the Plaintiff.”

9. Additionally, as the Tenant already vacated the premises this Tribunal ceases to have jurisdiction over the matter as there no longer exists a Landlord-tenant relationship. The matter can only be adjudicated over by the civil courts.
10. In view of my analysis of the facts and the law herein above, I find and order as follows:
  - i. This suit stands withdrawn.
  - ii. The Tribunal does not have Jurisdiction to determine the matter as there no longer exists a Landlord-Tenant relationship.
  - iii. The Plaintiff shall bear the costs.

It is so ordered.

**RULING DELIVERED AND ISSUED IN CHAMBERS IN ACCORDANCE WITH THE COVID 19 PRACTICE RULES THIS 26<sup>TH</sup> DAY OF JANUARY 2024 IN THE ABSENCE OF BOTH PARTIES.**

**SIGNED**

**HILLARY K. KORIR - CHAIRMAN**

**RENT RESTRICTION TRIBUNAL**

**NAIROBI**

Certified copies to issue to parties accordingly.

