

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL DIVISION, MILIMANI

Civil Case 336 of 2003

ISHMAEL KAGUNYI THANDE.....PLAINTIFF

VERSUS

HOUSING FINANCE COMPANY OF KENYA LIMITED.....DEFENDANT

R U L I N G

Rule 4 of Order 24 of the Civil Procedure Rules (the Rules) provides that if any subsequent suit shall be brought before payment of the costs of a discontinued suit upon the same or substantially the same cause of action the court may order a stay of such subsequent suit until such costs shall have been paid.

In the present case it is clear that the previous suit, HCCC No. 896 of 2000, which was between the same parties upon substantially the same cause of action, was not discontinued by the Plaintiff herein, who was also the plaintiff in that previous suit. It was struck out by order of the court. Rule 4 aforesaid cannot therefore be properly invoked. In any event, consequent upon subsequent proceedings and orders herein, especially the order entered on 21st June, 2005, the court was informed on 19th July, 2005 that the costs in the previous suit have since been paid.

As the application by notice of motion dated 25th June, 2004 (*in which the Defendant sought an order to stay the present suit pending payment by the Plaintiff of the costs in the previous suit*) has not been withdrawn it is hereby dismissed with no order as to costs. It is so ordered.

DATED AND SIGNED AT NAIROBI THIS 21ST DAY OF JULY, 2005.

H.P.G. WAWERU

JUDGE

DELIVERED THIS 22ND DAY OF JULY, 2005.