

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL SUIT NO. 1939 OF 1998

TIMOTHY JOWELL KAMANO.....PLAINTIFF
-VERSUS-
KARIUKI GITHUA.....DEFENDANT

RULING

The applicant in this application is asking the Court to review its Order of 14th December, 1999 in which the court allowed the Plaintiff to withdraw his case which he did. The applicant says that it was wrong for the Court to grant leave to withdraw without serving him or his advocate with a notice. The court did not take into account that the applicant had obtained an injunction against the plaintiff which injunction according to him was still in force.

I have read the proceedings and the affidavit in support of this application and note from the record that the plaintiff applied to discontinue the suit which application was allowed on 14.12.99. There was no counter claim in the defence and hence there is no claim by the defendant, which he could ask to be reinstated. The applicant cannot force the plaintiff to continue with a suit if he did not wish to prosecute. The only thing the applicant as defendant in that suit could ask for is costs for the suit still at the discretion of the court.

This application has no merit and it is dismissed with costs.

Dated and delivered this 29th September, 2000.

KASANGA MULWA

JUDGE