



Damah Alliance Limited v Muthee & another (Environment & Land Case E204 of 2023) [2023] KEELC 20473 (KLR) (2 October 2023) (Ruling)

Neutral citation: [2023] KEELC 20473 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E204 OF 2023
EK WABWOTO, J
OCTOBER 2, 2023**

BETWEEN

DAMAH ALLIANCE LIMITED PLAINTIFF

AND

DAVID MUTHAMI MUTHEE 1ST DEFENDANT

MARTIN NGIGE 2ND DEFENDANT

RULING

1. The plaintiff herein Damah Alliance Limited instituted this suit vide a plaint dated 8th June, 2023 through the law firm of Chesikaw & Kiprop Advocates.
2. Subsequently thereafter and having served the defendants herein, the plaintiff filed a notice of change of Advocates and appointed the law firm of Rene & Hans LLP Advocate. The said Advocates filed a Notice of Withdrawal of the entire suit with no orders as to costs. The said notice was dated September 14, 2023. The reasons stated in the said notice were that the firm of Chesikaw & Kiprop Advocates had filed the suit without any lawful and valid instructions by the Directors of the Plaintiff and in the circumstances, the said suit is nullity ab initio.
3. On September 18, 2023, when this matter came up for directions, the defendants who were present had no objection to the withdrawal of the same save for costs as was prayed by the 1st defendant.
4. Order 25 of the [Civil Procedure Rules](#) provides for withdrawal of suits as follows;

“(1)

- (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.

(2)

- (1) Where a suit has been set down for hearing it may be discontinued, or any part of the claim withdrawn upon the filing of a written consent signed by all the parties.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

5. The right to withdraw a suit under order 25 rules 1 and 2(1) is not fettered by any conditions and a party who intends to withdraw their suit, has an absolute right to do so. However, under order 25 rule 2(2), withdrawal of a suit requires permission of the court and the withdrawal may be subject to terms that the court considers just, including payment of costs or filing of any other suit.
6. This court has considered the said notice of withdrawal filed by the plaintiff. The court has further considered the circumstances in respect to the said withdrawal. This suit was yet to be set down for hearing and in the circumstances, this court shall proceed to allow the withdrawal of the plaintiff's suit filed herein with no order as to costs.

It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 2ND DAY OF OCTOBER, 2023.

E.K. WABWOTO

JUDGE

