



REPUBLIC OF KENYA



**Maguta v Njuguna & another; Kamau (Third party) (Civil Suit 1181 of 2000) [2025] KEHC 9738 (KLR) (Civ) (3 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 9738 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL SUIT 1181 OF 2000**

**JN MULWA, J**

**JULY 3, 2025**

**BETWEEN**

**ESTHER WAMUKORI MAGUTA ..... PLAINTIFF**

**AND**

**MARTHA N NJUGUNA ..... 1<sup>ST</sup> DEFENDANT**

**ASAPH NJUGUNA KAROGI ..... 2<sup>ND</sup> DEFENDANT**

**AND**

**MR. MBIYU KAMAU ..... THIRD PARTY**

**RULING**

1. The Plaintiff's case hereof filed by a plaint dated 19/10/2000 was discontinued on 18/02/2004 with costs to the defendant pursuant to order 24 Rule 2(2) of the Civil Procedure Rules (CPR).
2. By a Motion dated 12/06/2024 the Applicant/Plaintiff approached this court for orders:-
  1. Spent
  2. Spent
  3. That the Hon. Court allows the Plaintiff to reinstate her suit for the claim of compensation from a road traffic accident that occurred on 12/02/2000 along Thika Road near Juja.
  4. That each party to bear own costs.
3. The motion is predicated under Article 159 of *the Constitution* and Section 3A of the *Civil Procedure Act*, and Supported by the affidavit of the plaintiff sworn on an even date. It is the plaintiffs averment that she instructed the law firm of Wagaki Munene & Co. Advocates to file and pursue



- her compensation claim, that the case was filed but the said advocates failed to pursue and secure attendance of witnesses when the case was listed for hearing upon which the court dismissed the court with costs with a decree being issued on 14/05/2004 and taxed costs for Kshs. 108,653/=.
4. The Plaintiff further depones that due to her poor health resulting from the accident she was unable to pursue her case, hence the application before the court.
  5. In opposition to the application the 1<sup>st</sup> and 2<sup>nd</sup> Defendants filed grounds of opposition dated 29/11/2004, citing provisions of Order 25 of the CPR on withdrawals and discontinuation of suits upon which the suit was discontinued on 18/02/2004, arguing that the suit having been discontinued or withdrawn, an order for reinstatement cannot issue, but a party may file another suit.
  6. The Defendant further depones that under Order 25 Rule 4 CPR, a subsequent suit after withdrawal may not be filed before payment of costs for the former suit, and therefore urging the court to dismiss the application with costs.

### **Analysis and Determination**

7. I have considered the parties depositions and the underpinning legal provisions in respect to the application, as well as perusal of the court proceedings and the court order discontinuing the suit.
8. The court (Angwa J) discontinued the case under Order 24(2) of the CPR on 18/02/2004 in presence of Wagaki Advocate for the Plaintiff Mbai Kibuthu Advocate and Kamesh Manek for the Defendants the plaintiffs advocate made application to withdraw the case with no objections from the defence counsel. The court allowed the discontinuation with costs, which was later taxed, but the Plaintiff never paid the costs.
9. A party who discontinues or withdraws its case may file a subsequent suit subject to limitation period and payment of costs if such was ordered as is the case here.

Order 25 Rule 4 provides-

If any subsequent suit shall be brought before payment of 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.

10. It is evident from the plaintiffs depositions that the taxed costs on the discontinued suit were never paid and therefore knocks off the Plaintiff's quest to file a subsequent suit. More importantly, a suit that has been discontinued cannot be reinstated, even by consent of the partes as held in the cases of Charles Kptaibei Birech v. Paul Waweru Mbugua & Another [2021] eKLR and Juma V. Khaunya & 2 Others [2004] eKLR but such party may bring or file a fresh suit.
11. That brings this court to the matter of Limitations of Actions Act; Cap 22, Laws of Kenya. The cause of Action in the suit was a tort – a road traffic accident which occurred on 12/02/2000 as seen from the Plaintiffs' pleadings. Section 4(2) of the Act provides that an action founded on Tort may not be brought after three years save by an order of court extending the period.
12. This is the position in this case. The Plaintiff is unfortunately barred from instituting a fresh suit and in any event this is not what the plaintiff is seeking.
13. To the extent that the Applicant/Plaintiff seeks an order to reinstate the suit discontinued in February 2004, the law in my view is very clear and without any ambiguity. Order 24 Rule 4 CPR could have been the cure but again, the costs of the suit are yet to be paid to the defendants, not to mention the period the Plaintiff has taken to come to court, a whole twenty years!



14. It cannot be allowed as to do so would cause serious prejudice to the defendants, which this court will not attempt to do.
15. For the foregoing, I find no merit in the Plaintiffs application dated Motion dated 12/06/2024 and is therefore dismissed with costs to the Respondents/Defendants.

**DELIVERED DATED AND SIGNED AT NAIROBI THIS 3<sup>RD</sup> DAY OF JULY, 2025**

.....

**JANET MULWA.**

**JUDGE**

