



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MILIMANI COMMERCIAL & TAX DIVISION

CIVIL CAUSE NO.E 277 OF 2019

DIRECTLINE ASSURANCE COMPANY LTD.....PLAINTIFF

-VERSUS-

SAMUEL KAMAU MACHARIA.....1ST DEFENDANT

ROYAL MEDIA SERVICES LTD.....2ND DEFENDANT

ROYAL CREDIT LIMITED.....3RD DEFENDANT

PURITY GATHONI MACHARIA.....4TH DEFENDANT

RULING

1. On **14th November 2019** the plaintiff's learned advocate **Mr Kiragu Kimani** informed the court that he had instructions from the plaintiff to withdraw this case. He however stated that one of the plaintiff's share-holders, namely Janus Limited, was opposed to that withdrawal and that a counsel was in the process of filing a Notice of appointment on its behalf.

2. Later on that day, learned advocate Mr Nyaribo representing Janus Limited addressed the court on why the case should not be withdrawn as sought. He stated that under Order 25 Rule of the Civil Procedure Rules a party is required to file a formal Notice for withdrawal of a case. Further that such withdrawal could only be with the concurrence of the plaintiff's share holders one of whom is Janus Limited.

3. The response to the address on behalf of Janus Limited by the defendant and the plaintiff's learned counsel was that the parties had consented to the withdrawal of the case with no order as to costs.

4. In view of the detailed address by the counsels I reserved my Ruling on whether to permit the plaintiff to withdraw the case to today. In the interim a Notice of Motion dated 20th November 2019 was filed by the plaintiff now represented by the firm of Cherongis and company Advocates. By that application the plaintiff seeks to arrest today's Ruling on the grounds that the plaintiff had previously instructed their then advocate to withdraw this case and that as such the then advocate as an agent of the plaintiff should have withdrawn this case. I have also noted that the plaintiff and the defendant filed a consent which is in the following terms:

“This suit be marked as withdrawn and all Orders granted by Hon Lady Justice Mary Kasango on 15th October 2019 be vacated forthwith”

5. With that consent on record this court has no basis of entertaining the address made by Janus Limited opposing the withdrawal of this case. I will therefore grant the following orders **by Consent**:

(a). This case is marked as withdrawn and the orders of this court of 15th October 2019 are hereby vacated.

DATED, SIGNED and DELIVERED at NAIROBI this 27TH day of NOVEMBER, 2019.

MARY KASANGO

JUDGE

Ruling Read and Delivered in Open Court in the presence of:

Sophie.....COURT ASSISTANT

.....FOR THE PLAINTIFF

.....FOR ALL DEFENDANTS