

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KIAMBU
HCCC NO.E027 OF 2023

AGNES MUTHANJE DANIELPLAITIFF/APPLICANT

VERSUS

**TRIDENT INSURANCE
COMPANY LIMITED..... 1ST DEFENDANT/1ST RESPONDENT
INSURANCE REGULATORY
AUTHORITY 2ND DEFENDANT/2ND RESPONDENT**

AND

MOSES NJOGU KIMANLINTERESTED PARTY

RULING

1. In the Ruling delivered by this court on 23rd May, 2025 the parties were directed to file submissions in respect to the **Notice Of Preliminary Objection** contained in the 2nd Defendant's Statement of Claim dated 30th April, 2024 so that it can be determined in priority. The Preliminary Objection has been raised on the following grounds:-

a) The suit offends the mandatory statutory exclusion of liability against the 2nd Defendant under Section 168 of the Insurance Act which precludes institution of the suit without leave of court which may only be granted if prima facie evidence of bad faith is adduced against the 2nd Defendant.

b) The suit offends the statutory provisions of the legal principles

of exhaustion of alternative dispute resolution mechanisms as provided for under Section 173 and Section 204A(3) of the Insurance Act and Section 9(2) of the Fair Administrative Action Act.

c) The Court lacks jurisdiction to hear the case against the 2nd Defendant in view of the doctrine of exhaustion of dispute resolution mechanisms.

d) The suit offends Section 13 (A) of the Government Proceedings Act having failed to issue the mandatory 30 days' notice of intention to sue to the 2nd Defendant. The 2nd Defendant shall apply that the suit against it be struck out with costs to the 2nd Defendant.

2. However, upon going through the **Case tracking System (CTS)**, the court notes that on 23rd June, 2025, the Plaintiff filed **Notice of Withdrawal of Suit** against the 2nd Defendant with no orders as to costs which fundamentally disposes the **Notice of Preliminary Objection**. The court has also noted that the Notice of Withdrawal was filed was on the same day when the matter was last in court and there is no indication by way of Affidavit of Service that the same was served upon the 2nd Defendant. In view of this, the court cannot proceed and order for the withdrawal of the suit against the 2nd Defendant with no orders as to costs before it hears the

2nd Defendant's view in that regard. For this reason, the court directs that the parties address it in respect to costs to enable it make further orders on the same.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU
THIS 7TH DAY OF JANUARY, 2026.

D. O. CHEPKWONY
JUDGE

In the presence of:-

Mr. Omuga counsel for the Applicant

M/S Kibiego holding brief for M/S Kilimo counsel for 2nd Defendant

Court Assistant - Sakina