



**Osoro v Kenya Rural Roads Authority (KERRA) & another (Environment & Land  
Petition E005 of 2022) [2023] KEELC 16537 (KLR) (23 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 16537 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA  
ENVIRONMENT & LAND PETITION E005 OF 2022**

**JM KAMAU, J  
MARCH 23, 2023**

**BETWEEN**

**JAMES OMBOGA OSORO ..... PETITIONER**

**AND**

**KENYA RURAL ROADS AUTHORITY (KERRA) ..... 1<sup>ST</sup> RESPONDENT**

**SINOHYDRO CORPORATION LTD ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The 2<sup>nd</sup> Respondent has sought for orders that:  
  
' This court be pleased to strike out the 2<sup>nd</sup> Respondent from the instant proceedings for misjoinder. The costs of the Application is borne by the Petitioner.'
2. The Grounds upon which the Application is made include:  
  
' the 2<sup>nd</sup> Respondent had illegally dumped material on the Petitioner's parcel of land whereas the 2<sup>nd</sup> Respondent is not privy to the facts relating to the contract and to the illegal dumping.'
3. In the Affidavit of her Chief Engineer sworn on December 5, 2022, the 2<sup>nd</sup> Respondent depones that she did not illegally dump any material on the Petitioner's parcel of land Isoge/Kineni Settlement Scheme/818 and that the Petitioner would not suffer any prejudice should she be struck out as a party in these proceedings.
4. Neither the Petitioner nor the 1<sup>st</sup> Respondent filed any Response to the above Application. On March 6, 2023 the Court gave the 2<sup>nd</sup> Respondent 7 Days within which to file her written Submissions. The same were not forthcoming and I had to retire to write my Ruling. The Petitioner's Petition dated August 2, 2022 seeks conservatory orders for restraining the Respondents from



dumping by any means soil from the ongoing construction of the Erongei (D 209)- Kebuse-Kahawa-Memisi-Tembwo/ Border-Borabu TTC-Omonyanya, Amakara-Isoge-Chebilat, Chench-Simbauti-Tindereti-Nyansiongo Missio & Anti Stock Theft Unit (ATSU)-Saiga Nginya-Kineni Junction-Prince Dan High School Roads Project Only in so far as they concern the dumping of soil by any other means at the Petitioner's Plot – Isoge Kineni Settlement Scheme/818. He seeks to: -

5.

- (a) Prevent, stop or discontinue any act or omission that is harmful to the environment.
- (b) Compel any public officer to take measures to prevent or discontinue any act or omission that is harmful to the environment.
- (c) Provide compensation for any victim of a violation of the right to a clean and healthy environment.

6. It is the Petitioner's case that whatever the 1<sup>st</sup> Respondent has commenced she has contracted the 2<sup>nd</sup> Respondent to carry it out. The 1<sup>st</sup> Petitioner's instructions are being carried out by the 2<sup>nd</sup> Respondent. The latter may carry out work in line with the instructions from the 1<sup>st</sup> Respondent or even deviate from the given instructions. At this stage we cannot tell how she is conducting the exercise. Time for those investigations will come. And in any case there is a nexus between the Principal (the 1<sup>st</sup> Respondent) and the Agent (2<sup>nd</sup> Respondent). If the court finds that there is liability on the part of the 2<sup>nd</sup> Respondent, it may find the 1<sup>st</sup> Respondent vicariously liable. Should the 2<sup>nd</sup> Respondent be left out in this Petition there is a likelihood of the 1<sup>st</sup> Respondent dismissing the Principal-Agent relationship. Should the court be convinced that the 2<sup>nd</sup> Respondent was in a frolic of his own mission then the 2<sup>nd</sup> Respondent may end up being condemned unheard which would lead to a travesty of justice: In *Lenson Products Limited v Mary Waitihira Ndirangu & another (Suing as joint administrators of the Estate of David Mwaura, deceased)* [2020] eKLR High Court of Kenya at Kiambu, Civil Division Civil Appeal No 121 of 2018 Lady Justice Ruth N Sitati observed as follows:

' In the instant case, the first issue is to establish the agency/employer-employee relationship between the driver and the owner of the suit motor vehicle and then secondly establish whether the driver was driving the suit motor vehicle at the owner's request or authority, express or implied. The only person who could have given a clearer picture in evidence as to how the accident happened was the driver, but since he did not testify, the evidence of the respondents on negligence on the part of the driver remained unchallenged. The driver was best placed to explain how a vehicle that is presumably well maintained and serviced and did not have any mechanical problems as per the evidence of DW2 could start moving in a zig zag manner and cause an accident. As the Court of Appeal observed in the cases of *Kenya Bus Services Ltd v Dina Kawira Humphrey* CA 295/2000 and *Nairobi CA 179 of 2003 Rahab Micere Murage estate of Esther Wakiini Murage v Attorney General & 2 others* [2015] e KLR:

'Buses, when properly maintained, properly serviced and properly driven do not just run over bridges and plunge into rivers without any explanation. Well driven motor vehicles do not just get involved in accidents.'

7. Going by the above the only person who would give a clearer picture in evidence as to whether there is any act or omission leading to environmental degradation is the 2<sup>nd</sup> Respondent otherwise the evidence of the Petitioner would remain unchallenged. The 2<sup>nd</sup> Respondent is best placed to explain what is on



the ground. The 1<sup>st</sup> Respondent may not. In the circumstances I am unable to grant the prayer sought by the 2<sup>nd</sup> Respondent, of striking her from the instant proceedings. There is no misjoinder.

**RULING DATED, SIGNED AND DELIVERED AT NYAMIRA THIS 23RD DAY OF MARCH, 2023.**

**MUGO KAMAU**

**JUDGE**

**In the Presence of: -**

**Court Assistant: Sibota**

**Petitioner: N/A**

**Respondents: Mr. Mainga for the 2<sup>nd</sup> Respondent**

