



Kexian & 5 others v Inspector General of Police & 6 others; Rabow Co Limited & 3 others (Interested Parties) (Petition E013 of 2024) [2024] KEHC 16441 (KLR) (27 December 2024) (Ruling)

Neutral citation: [2024] KEHC 16441 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
PETITION E013 OF 2024
DR KAVEDZA, J
DECEMBER 27, 2024**

BETWEEN

**XIAO KEXIAN 1ST PETITIONER
GE LI 2ND PETITIONER
PENGFEI CHEN 3RD PETITIONER
HONGDONG QIU 4TH PETITIONER
HANMENG QIU 5TH PETITIONER
BANGBET LIMITED 6TH PETITIONER**

AND

**INSPECTOR GENERAL OF POLICE 1ST RESPONDENT
REGIONAL CRIMINAL INVESTIGATIONS OFFICER, NAIROBI
AREA 2ND RESPONDENT
OCS NAIROBI AREA POLICE HQ 3RD RESPONDENT
DIRECTORATE OF CRIMINAL INVESTIGATIONS 4TH RESPONDENT
DIRECTOR OF PUBLIC PROSECUTIONS 5TH RESPONDENT
CHIEF MAGISTRATES COURT AT KIBERA 6TH RESPONDENT
BETTING CONTROL AND LICENSING BOARD 7TH RESPONDENT**

AND

**RABOW CO LIMITED INTERESTED PARTY
LUCKYBUS DMCC INTERESTED PARTY
SAFARICOM PLC INTERESTED PARTY**



BETTING CONTROL AND LICENSING BOARD INTERESTED PARTY

RULING

1. Vide a Notice of Withdrawal dated 7th November 2024, the Petitioners sought to withdraw the instant Petition.
2. When the matter came for directions on 8th November 2024, the 1st Interested Party opposed the withdrawal and asked for costs of Kshs. 20,000/= . Consequently, the parties were directed to file written submissions on the issue of costs.
3. It is the 1st Interested Party's submission that the instant proceedings are an abuse of the court process and that the withdrawal is made in bad faith as the Petitioners have filed different applications in four different courts as indicated hereunder seeking the same reliefs which amounts to forum shopping.
 - a. Kibera High Court Petitioner E013 of 2024 vide the application dated 29th October 2024.
 - b. Kibera CM Misc. Application No E985 of 2024 vide the application dated 28th October 2024.
 - c. Milimani HCCOMM E485 of 2024 vide the application dated 30th October 2024.
 - d. Milimani HC Petition No 611 of 2024 vide the application dated 4th November 2024.
4. I have perused the pleadings annexed to the 1st Interested Party's Replying Affidavit sworn on 26th November 2024 and note the following;
 - a. Kibera Petition No E013 of 2024 seeks various reliefs including an order to quash the proceedings in Kibera MCCR No E1667 of 2024 Republic v Xiao Kexian.
 - b. Kibera CM Misc. Application E985 of 2024 was an application for joinder by Bangbet Limited, the 6th Petitioner herein and for the review of the freezing orders issued by the lower court on 23rd October 2024.
 - c. Milimani HCCOMM E485 of 2024 is a commercial dispute instituted by Rabow Company Limited (the 1st Interested Party herein) against Lucky Bus DMCC and others. The application filed therein sought a stay of the orders issued in Kibera CM Misc. E985/2024 on 23rd October 2024 to freeze pay bill numbers 569699 and 3039787 in the name of Bangbet Limited and domiciled at Safaricom PLC.
 - d. On the other hand, Milimani HC Petition E611/2024 was filed by Bangbet Limited and Lucky Bus DMCC (the 6th Petitioner and the 2nd Interested Party herein respectively) against the Directorate of Criminal Investigations seeking conservatory orders.
5. Notably, the instant Petition was filed by the firm of Wambugu & Muriuki Advocates while Milimani HC Petition E611/2024 was filed by the firm of H&K Law LLP. A cursory glance at the matters aforementioned reveals that the same were filed by different parties, seeking different reliefs. I further note that the Plaintiff in HCCOMM E485/2024 (c above) filed a Notice of Withdrawal dated 31st October 2024.
6. Rule 27 of the [*Constitution of Kenya \(Protection of Rights and Fundamental Freedoms\) Practice and Procedure Rules, 2013*](#) (the Mutunga Rules) provides that;
 1. The Petitioner may



- a. On notice to the court and to the Respondent, apply to withdraw the Petition, or
 - b. With leave of the court, discontinue the proceedings.
2. The court shall, after hearing the parties to the proceedings, decide on the matter and determine the juridical effects of that decision.
3. Despite sub rule (2), the court may, for reasons to be recorded, proceed with the hearing of a petition in spite of the wish of the petitioner to withdraw or discontinue the proceedings.
7. In *Luka v Narok Bursaries Management Board & 6 others; Narok County Assembly (Interested Party)* (2024) KEHC 2523 (KLR), the court identified two guiding principles where a court will refuse a withdrawal of a petition thus; the matter must be a public interest litigation, and, the matter must be withdrawn for ulterior motives.
8. Applying the twin principles, I am satisfied that the instant Petition is not one instituted as a public interest litigation as the Petitioners seek to protect and safeguard their personal and/or individual rights. Secondly, I am of the considered view that the withdrawal is not sought for ulterior motives. There is therefore, no justification for this court to refuse the order of withdrawal.
9. Additionally, I am not persuaded that the proceedings herein are an abuse of the court process. Further, as highlighted under paragraph (4) above, the argument that the Petitioners have filed four (4) different cases before different courts seeking the same reliefs is incorrect for the reasons advanced hereinabove.
10. Having said that, I hasten to state that it is not disputed that the 1st Interested Party filed a response in opposition to the Petition and also filed submissions in respect of the issue of costs. Accordingly, I find that the 1st Interested Party is entitled to costs.
11. In the premises, I allow the Notice of Withdrawal dated 7th November 2024 with costs to the 1st Interested Party to be assessed by the Deputy Registrar.

Orders accordingly.

RULING DATED AND DELIVERED IN THE ABSENCE OF PARTIES BUT SHARED THROUGH EMAIL THIS 27TH DAY OF DECEMBER 2024.

D. KAVEDZA

JUDGE

