



**Guchokaniriria Kihato Farmers v General & 2 others (Environment & Land
Case 11 of 2015) [2023] KEELC 18004 (KLR) (16 June 2023) (Ruling)**

Neutral citation: [2023] KEELC 18004 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT & LAND CASE 11 OF 2015**

**JO OLOLA, J
JUNE 16, 2023**

BETWEEN

GUCHOKANIRIRIA KIHATO FARMERS PLAINTIFF

AND

ATTORNEY GENERAL 1ST DEFENDANT

CHARLES MUGANE NJONJO 2ND DEFENDANT

SOLIO RANCH LIMITED 3RD DEFENDANT

RULING

1. By the Chamber Summons dated May 5, 2022 filed by one Edward Kings Onyancha Maina purportedly on behalf of the Plaintiff – Guchokaniriria Kihato Traders and Farmers Company Limited, the following order are sought:
 2. That the pleadings filed by Hamilton Harrison & Mathews for the 2nd and 3rd Defendants plus the pleadings filed by Victor Njuguna Nduhiu including any proceedings generated by Mr. Owiti and Mr. Victor Njuguna Nduhiu be and (are) hereby set aside and/or struck out from the Court records ab initio;
 3. That the said same Mr. Owiti and Mr. Victor Njuguna Nduhiu bear the costs incidental to (the) instant Chamber Summons at the higher scale.
2. The application which is supported by the Affidavit sworn by the said Edward Kings Onyancha Maina is premised on the grounds:
 - (i) That neither Mr. Owiti nor Mr. Victor Njuguna Nduhiu are licensed to practice as advocates pursuant to section 21 of the [Advocates Act](#);



- (ii) That both Mr. Owiti and Mr. Nduhiu are on Court record with effect from February 20, 2019; and
 - (iii) That the Advocates Search Portal has revealed that the two individuals are not licensed to practice as Advocates and their actions amount to perjury, forgery and personation including false utterances and conspiracy to commit a misdemeanor and or a felony.
3. The application is opposed. In his Replying Affidavit sworn on June 13, 2022 and filed herein on June 15, 2022, Victor Kenji Nduhiu Advocate avers that the documents exhibited by the Applicants have not revealed his status as an Advocate and that they only reveal the status of the other practitioners in the Law
- Firm known as Njuguna Kimani Nduhiu & Company Advocates wherein he was formerly a partner until the year 2021.
4. The Respondent who also asserts that he appears for the Plaintiffs avers that he is a valid practitioner duly licensed to practice and that he is the one who filed the pleadings and not the person referred to as Victor Njuguna Nduhiu who is unknown to him.
5. The 3rd Defendant is equally opposed to the application. In a Replying Affidavit filed by their Advocate on record Eddy Owiti, Counsel avers that he joined the Law Firm Hamilton Harrison & Mathews Advocates in the year 2017 and that he has always held a valid practicing certificate including for the years 2021 and 2022 when the application was filed.
6. Counsel further avers that a search of his name on the Law Society of Kenya (LSK) website shows that he has been active and licensed to practice for the last 6 years. The LSK is however yet to update his work place from Coulson Harvey LLP where he used to work to Hamilton Harrison & Mathews Advocates where he is now based.
7. The 3rd Defendant further avers that on June 17, 2020 Mr. Kiragu Kimani Advocate who is a Partner in the Law Firm Hamilton Harrison & Mathews Advocates wrote to the Applicant explaining why he was wrong in the contention that Mr. Owiti is not licensed to practice law and forwarded copies of Mr. Owiti's practicing certificates but the Applicant has refused to withdraw the application.
8. The 3rd Defendant avers further that the papers sought to be struck out were filed by the Law Firm Hamilton Harrison & Mathews Advocates and not Mr. Owiti as an individual and that the application is therefore without merit.
9. I have carefully perused and considered the application as well as the responses thereto. I have similarly perused and considered the submissions and authorities placed before me by the Parties.
10. By the application before me, the Applicant urges the Court to set aside and/or strike out the pleadings filed by Messrs Hamilton Harrison & Mathews Advocates as well as those filed by one Victor Njuguna Nduhiu on account that Mr. Owiti who generated documents on behalf of the Law Firm and the said Victor Njuguna Nduhiu were not licensed to practice as Advocates during the relevant period.
11. While it was not very clear from both the application and the Supporting Affidavit of Edward Kings Onyancha Maina who the person referred to as "Mr. Owiti" was, it became clear from the response of the 3rd Defendant that the application was made in reference to Mr. Eddy Owiti Advocate who is an associate at the Law Firm Hamilton Harrison & Mathews Advocates.
12. Again while the application sought to have pleadings filed by the said Victor Njuguna Nduhiu struck out, it turned out that there was no such person and that the correct name of the practitioner in



conduct of the proceedings was Victor Kenji Nduhiu who was formerly a partner at the Law Firm Njuguna Kimani Nduhiu & Company Advocates.

13. As it turned out, both Eddy Owiti and Victor Kenji Nduhiu were licensed to practice law for the period 2021 and 2022 which was the period the Applicant had claimed they had no valid practicing certificates. That much is clear from the copies of the Practicing Certificates they have annexed to their respective responses to the application.
14. It was also apparent in the case of Mr. Eddy Owiti Advocate that the information regarding his status was made available to the Applicant via an email from the Law Firm Hamilton Harrison & Mathews Advocates on June 17, 2022. It was therefore surprising that the Applicant chose to proceed with the application before the Court.
15. It was also clear to this Court that the pleadings sought to be struck out were not specified by the Applicant. Having perused the records herein, it was evident that the documents filed in the Court record had been filed by Messrs Hamilton Harrison & Mathews Advocates as well as Njuguna Kimani Nduhiu & Company Advocates. There was no document or pleading filed individually by or in the name of the two Counsels cited herein.
16. Looking at the totality of the circumstances herein, it was clear to me that the application dated 5th May, 2022 was nothing but frivolous and vexatious. As was stated by the Court of Appeal in *Trust Bank Limited -vs- Amin Company Limited* (2000) KLR 164:

“A pleading or an action is frivolous when it is without substance or groundless or fanciful and is vexatious when it lacks bona fides and is hopeless or offensive and tends to cause the opposite party unnecessary anxiety, trouble or expenses. A pleading which tends to embarrass or delay fair trial is a pleading which is ambiguous or unintelligible or which states immaterial matters and raises irrelevant issues which may involve expenses which will prejudice the fair trial of the action.”
17. This was clearly one such application. As it was not clear to me on whose instruction the application was made as some of the Plaintiffs deny being represented by the Applicant, I dismiss the same and hereby direct that the costs thereof be met by Mr. Edward Kings Onyancha Maina who filed the application.

RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT NYERI THIS 16TH DAY OF JUNE, 2023.

In the presence of:

Ms Kagendo holding brief for Mr. Gitonga for the Plaintiffs

Mr. Nduhiu for the Plaintiffs

Mr. Edward Kings Onyancha the Applicant present in person

Mr. Ochieng for the 3rd Defendant

Mr. Mwangi Kagumba- Plaintiffs Chairman present in person

Court assistant - Kendi

.....

J. O. Olola

JUDGE

