



Tenna & another v Joslyn & 5 others (Environment & Land Case E016 of 2022) [2023] KEELC 20113 (KLR) (22 September 2023) (Ruling)

Neutral citation: [2023] KEELC 20113 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE E016 OF 2022
A OMBWAYO, J
SEPTEMBER 22, 2023**

BETWEEN

PETER H TENNA 1ST PLAINTIFF

WYCLIFFE WINSTON WAITA 2ND PLAINTIFF

AND

SARAH JOSLYN 1ST DEFENDANT

NAKURU COUNTY LAND REGISTRAR 2ND DEFENDANT

NAKURU COUNTY LAND SURVEYOR 3RD DEFENDANT

NAKURU COUNTY LAND CONTROL BOARD CHAIRMAN 4TH DEFENDANT

THE COMMISSIONER OF LANDS 5TH DEFENDANT

ATTORNEY GENERAL 6TH DEFENDANT

RULING

1. This ruling is in respect of the plaintiffs Notice of Motion application dated 8th July 2023 which is expressed to be brought under order 19 rule 6, 7 and 8 and order 51 rule 1 of the [Civil Procedure Rules](#) and seeks the following orders;
 - a. Spent
 - b. Spent
 - c. That costs of this application be provided for.
2. The grounds on the face of the application are that on the 19th May 2022, the 1st respondent filed a replying affidavit sworn on 13th May 2022. That at paragraph 23 the 1st respondent failed to reveal the



other party she was deponing on behalf of. That the 1st respondent has not demonstrated to the court if she has authority to sue. That the 1st Plaintiff lodged a complaint with the Advocates Complaint Commission. That the commission made its decision based on the affidavit.

3. The application was supported by the affidavit of the 1st plaintiff Peter H. Tenna sworn on 6th July 2023. He deposed that the 1st respondent filed a replying affidavit sworn on 13th May 2022. He also deposed that the Advocates Complaints Commission made a decision on 6th April 2023 that relates to the present matter. He further deposed that the Advocates Complaints commission's decision indicated that the advocate had not committed any offence of professional misconduct. The rest of the supporting affidavit contains averments that are difficult to comprehend.
4. There is no response filed to the application and neither are there submissions filed.
5. After considering the application, I have noted that the plaintiffs have only sought for interim orders that were seeking to expunge the replying affidavit filed on 13th May 2023 pending the hearing and determination of the application inter parties. It is my view that the appropriate relief would have been to seek orders pending the hearing and determination of the suit.
6. Moreover, I do find no merit in the application as the replying affidavit is properly on record as the deponent is a party and that she was sued as opposed to the allegations by the applicant that she lacks the authority to sue. Furthermore the supporting affidavit to the application herein is incomprehensible. In view of the foregoing, the plaintiffs Notice of Motion application dated 6th July 2023 lacks merit and is dismissed with costs.

RULING, DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 22ND DAY OF SEPTEMBER 2023.

A O OMBWAYO

JUDGE

