



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 559 OF 2010

NATIONAL COUNCIL OF
NON-GOVERNMENTAL ORGANISATIONS1ST PLAINTIFF
ENLARGED TENT FOR GROWTH &
OUTREACH IN AFRICA (ETAGOA)..... 2ND PLAINTIFF
ORGANISATION FOR HEALTH &
TECHNOLOGY STUDIES..... 3RD PLAINTIFF

V E R S U S –

KITUO CHA SHERIA1ST DEFENDANT
ACTIONAID 2ND DEFENDANT
WORLD VISION..... 3RD DEFENDANT
DEVELOPMENT QUEST..... 4TH DEFENDANT
INTERCONTINENTAL CHARITY ORGANISATION.....5TH DEFENDANT
TOBACCO, ALCOHOL, SUBSTANCE ABUSE &
HIV/AIDS COUNSELLING CENTRE..... 6TH DEFENDANT
ACCOUTABLE LEADERSHIP..... 7TH DEFENDANT
KEN ONYANGO ANDAR..... INTERESTED PARTY

RULING

1. In the motion dated 18th December 2015, the subject matter of this ruling, the firm of K’Bahati & Co. Advocate for National council of Non-governmental Organisations, the 1st plaintiff herein, sought for leave to appeal against the ruling of this court delivered on 13.1.2015. The motion is supported by the affidavit of George Adhanja. The law firm of Mwakio, Kirwa & Co. Advocates

also appearing for the 1st plaintiff filed grounds of opposition to oppose the motion. When the motion came up for interpartes hearing, learned counsels appearing in the matter recorded a consent order to have the motion disposed of by written submissions. At the time of writing this ruling the firm of K’Bahati & Co. Advocates was the only party which had filed its submissions.

2. I have considered the grounds stated on the face of the motion plus the facts deponed in the supporting affidavit and the grounds

of opposition.

3. I have further considered the written submissions. What provoked the filing of this motion is this court’s decision delivered on 13.11.2015 whereof the firm of K’Bahati & Co. Advocates was ordered to cease acting for the 1st plaintiff. On 29.10.2015, the two firms of advocates namely: K’Bahati & co. Advocates and that of M/s Mwakio, Kirwa & Co. Advocates appeared and each claimed to have been instructed to appear for the 1st plaintiff, thus forcing this court to invite them to each file submission to enable this court determine which between them was rightfully on record for the 1st plaintiff. The firm of K’Bahati & Co. Advocates is aggrieved by the decision of this court ordering it to cease acting and has lodged a notice of appeal to challenge this court’s decision.
4. It is the submission of the aforesaid law firm that the leave to appeal is required. It is argued that the intended appeal raises arguable grounds hence the same is not frivolous. It was pointed out that one of the grounds which will be argued before the Court of Appeal is to the effect that this court erred to appreciate the fact that the firm of Mwakio, Kirwa and Co. Advocates was appointed to act for the 1st plaintiff by vide a letter written by officials who were illegally in office having been elected in office in defiance of a court order which had stayed any elections.
5. The firm of Mwakio, Kirwa & Co. Advocates is of the view that the motion should be dismissed because the same is frivolous and bad in law since a notice of appeal has already been lodged signalling the filing of an appeal. The aforesaid firm of advocates is of the further opinion that the motion is vexatious and an abuse of the court process.
6. In determining such an application the court is given an unfettered discretion. The court can grant leave so long as it is shown that the applicant has presented an appeal with arguable grounds. It is not mandatory for an applicant to show that its appeal has high prospects of success and it does not matter whether the applicant has lodged a notice of appeal or not.
7. In this motion, the applicant has shown that it has arguable grounds. Accordingly I am convinced that the motion has merit. Consequently, the firm of K,Bahati & Co. Advocates is granted leave to appeal against this court’s ruling delivered on 13.11.2015.

Dated, Signed and Delivered in open court this 27th day of May, 2016

J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

..... for the Defendant