



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT ELDORET**

**Civil Suit 74 of 2003**

**CHRISTOPHER KIPKORIR LEBO AND 331 OTHERS ..... PLAINTIFFS**

**VERSUS**

**THE KENYA POWER & LIGHTING COMPANY LIMITED ..... DEFENDANT**

**RULING**

This suit was filed by the Plaintiffs on 13<sup>th</sup> August, 2003. The Plaintiff was drawn and filed in Court by the firm of Messrs. Buluma & Company Advocates of Eldoret.

The Plaintiffs filed an Amended Plaintiff dated 17<sup>th</sup> November, 2006 on the same date with the leave of the Court. It was drawn and filed by Buluma & Company but countersigned by two other law firms namely, Gicheru & Co. Advocates and Tom Mutei & Co. Advocates.

On the 18<sup>th</sup> September, 2006, the firm of Tom Mutei & Company Advocates filed a Notice of Change to act for Plaintiffs No. 167 – 332 in place of Buluma & Co. Advocates. Previously the said firms of Gicheru & Co. Advocates and Tom Mutei & Co. Advocates had filed Notices that they would jointly act for the Plaintiffs together with Buluma & Co. Advocates.

On 11<sup>th</sup> November, 2006 the firm of M/s. Gicheru & Co. Advocates filed a Notice of Change of Advocates to act for Plaintiffs Nos. 6 – 167 out of the 332 Plaintiffs.

On 6<sup>th</sup> June, 2007 the firms of Gicheru & Co. Advocates jointly with the firm of Tom Mutei & Co. Advocates filed an application for leave, inter alia, leave to further amend the Amended Plaintiff.

When the application came before me, the Court suo moto, presented the following questions Counsel as a preliminary issue to be decided by the Court:-

1. Which law firm or advocate is formally on record for the Plaintiffs and which firm filed the Plaintiff?
2. Is there any Notice of Change of Advocates for any of the Plaintiffs?
3. If so, is any of the Notices valid? Can 332 Plaintiffs be represented on record by more than one law firm or advocate (aside the question of a leader, assistant etc)?
4. Are any applications by the firm of Tom Mutei & Co. Advocates and Gicheru & Co. Advocates properly, regularly and/or validly on the court record?

It was the view of the Court that those questions be

determined due to the number of advocates on record and all of them presenting or filing applications jointly and all signing the same.

A similar issue of representation arose in the High Court at Nairobi in Kabutha and 5 others –v- Nairobi Railways African Co-operative Society – Civil Case No. 2641 of 1976 (unreported). Justice Frank Shield held that the separate legal representation for joint Plaintiffs was not allowed unless specially ordered save in consolidated cases on the issue of damages. He relied on the English Case of LEWIS –V- DAILY TELEGRAPH 1964 (1) All E.R. 705 where L.J. Pearson of the Court of Appeal in England observed as follows:-

“..... In my view it was not regular and not in accordance with the proper practice that two firms of solicitors should be placed on the record as representing Mr. Lewis and the Plaintiff separately. The first move appears to have been by the solicitors for Mr. Lewis in putting themselves on the record as solicitors for him only. That was followed - not unnaturally – by a similar move by the Plaintiff Co’s solicitors putting themselves on the record as the plaintiff Co’s advocates only. But the question arises whether that is something which can properly be done or something which ought not be done except with leave of the Court. There is a Note on P. 1802 of the ANNUAL PRACTICE 1964 under heading “Change by some of several Plaintiffs”, and that note says:

“It is not for the practice of the central office to receive a notice to change solicitors for some out of several plaintiffs. There can only be one solicitor for the Plaintiffs unless otherwise specially ordered”  
.....”

Lord Justice Pearson also referred to the case of WEDDERBURN –V- WEDDERBURN (1853) 51, E.R. 993 in which the rule was stated by Master of Rolls Sir John Romilly who said:-

“Mr. and Mrs. Hawkins may in concurrence with the other four co-plaintiffs remove their solicitor and the other four may allow him to conduct the proceedings for all. But if the Plaintiffs do not all concur, Mr. Hawkins cannot take a course of proceeding different and a part from the other co-plaintiffs for the consequence would be, their proceedings might be totally inconsistent. When persons undertake the prosecution of a suit, they must make up their minds whether they will become co-plaintiffs, for if they do, they must act together. I cannot allow one of several Plaintiffs to act separately from and inconsistently with the others.”

I am persuaded by this opinion which should be a proper rule of practice in our Courts.

In this case, the Plaintiffs purport to be represented by 3 law firms. The Plaintiffs are 332 in number. I foresee a minefield of inconsistencies and future conflicts. The potentiality of disagreements by such a large group of co-Plaintiffs is real. There will be chaos to allow more than one advocate to act for them on this record. One can imagine if each of the 332 co-Plaintiffs retains his/her advocate in this suit. It will be impossible and impracticable to manage the suit. I see no problem if they chose other advocates to lead or assist the advocate on record. This is common practice.

I do not agree that it would be unconstitutional to disallow each of the Plaintiffs to be represented by Counsel of his choice in the circumstances of this case. I do agree that in criminal cases and ideally in civil cases, a party ought to be free to choose his counsel. This is a fundamental right. However, even in the exercise of fundamental rights there certain exceptional situations where the Constitution allows lawful departure e.g. when it comes to the rights of others.

In this case, it is the 332 Plaintiffs who elected or chose to file one suit. There is nothing in law which prevented each of them filing his or her own separate suit and retaining one Counsel. Here they elected to be in one suit. They are therefore deemed to have a common cause of action. A Plaint can only be filed by one advocate or firm. As a result they are deemed to have acquiesced to submit the rules of practice of the Court. In this case, I have chosen to follow the decision of Justice Frank Shields.

I do hold that Co-Plaintiffs may only be represented by separate Counsel in very exceptional cases and always with leave of the Court save for cases of consolidation of suits on the issue of damages.

I do therefore exercise the discretion of the Court and strike out all the Notices of Change filed by M/s. Tom Mutei & Co. Advocates and Gicheru & Co. Advocates. I also strike out the application dated 5<sup>th</sup> June, 2007 filed by the said firms jointly. The said documents and any other pleadings on record are nullities and must be expunged from the record.

The firm of Buluma & Co. Advocates shall remain on record for all the Plaintiffs. In the interest of justice, I order deletion of the names of the two law firms from the Amended Plaint and deem that it is validly on record as it was signed by Buluma & Co. Advocates.

Costs of these proceedings on the said question shall be in the cause.

**DATED AND DELIVERED AT ELDORET ON THIS 16<sup>TH</sup> DAY OF JUNE, 2008.**

**M. K. IBRAHIM**

**JUDGE**

**In the presence of:-**

Mr. Gumbo holding brief for Mr. Kajwang for the Defendant/Respondent

Mr. Muruka for 6-167 Plaintiffs

Mr. Buluma for Plaintiff 1-4

Mr. Tororei for Mr. Mutei for the rest of Plaintiffs