



**Nderitu & 5 others v Ndiara Enterprise Limited (Environment & Land  
Case 5 of 2010 & Environment and Land Case Civil Suit 128 of 2020  
(Consolidated)) [2022] KEELC 15621 (KLR) (8 December 2022) (Ruling)**

Neutral citation: [2022] KEELC 15621 (KLR)

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 5 OF 2010 & ENVIRONMENT  
AND LAND CASE CIVIL SUIT 128 OF 2020 (CONSOLIDATED)**

**LN MBUGUA, J**

**DECEMBER 8, 2022**

**BETWEEN**

**BERNARD MWANGI NDERITU ..... 1<sup>ST</sup> PLAINTIFF  
HESBON OMONDI ..... 2<sup>ND</sup> PLAINTIFF  
FRANCIS RUMONO ..... 3<sup>RD</sup> PLAINTIFF  
PETER WAMBUGU ..... 4<sup>TH</sup> PLAINTIFF  
STEPHEN KAMAU ..... 5<sup>TH</sup> PLAINTIFF  
MARY WAMBU (DECEASED) ..... 6<sup>TH</sup> PLAINTIFF**

**AND**

**NDIARA ENTERPRISE LIMITED ..... DEFENDANT**

**RULING**

1. This matter was scheduled for hearing for two consecutive days that is 7<sup>th</sup> and December 8, 2022. However, counsel for the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> plaintiffs in ELC 5 /2010 and 1<sup>st</sup>, 3<sup>rd</sup> – 8<sup>th</sup>, 10<sup>th</sup>, 13<sup>th</sup> – 17<sup>th</sup> defendants in ELC 128/2020 has filed an application dated 5.12.2022 to cease acting. On 6.12.2022, the court gave orders for the said application to be dealt with on 8.12.2022 (directions), on the basis that the date reflected in the CTS for hearing was 8.12.2022. Nevertheless, now that the advocates have sought for directions on the application before the hearing of the suit the court will proceed to give a ruling to that effect.
2. The counsel who has filed the application to cease acting desires that the said application be given a date so that he serves his clients. The 5<sup>th</sup> plaintiff in ELC No 5/2010 is in agreement with this proposition.



3. Counsel for defendant in ELC No 5/2010 and plaintiff in ELC 128/2020 avers that the application should be allowed, a hearing date be given by the court and that they will undertake to effect substituted service upon the parties where the advocate wants to cease acting.
4. I find that Mr Nyaberi who has filed an application to cease acting has not given any plausible explanation as to why the said application was filed just a day before the hearing, yet the date for hearing was given way back on 9.5.2022. Further, Mr. Nyaberi informed the court that the basis of filing the application to cease acting was that he was unable to contact his clients. He has not made any proposal on how he intends to reach them so as to serve the application.
5. The foregoing notwithstanding, this court is inclined to exercise abundance of caution to ensure that the trial proceeds in a fair and efficient manner.
6. To this end, I proceed to give directions that:
  1. The application dated December 5, 2022 be served upon the clients of Mr Nyaberi in the usual manner and in the event that he cannot reach them, then he shall effect service via substituted service.
  2. In the event of none compliance on the part of Mr Nyaberi on the issue of service then the application dated 5.12.2022 shall stand as allowed by the next court date. In that case, the court shall proceed to give a date for hearing of the main suit in which counsel B Kariuki shall be required to effect substituted service upon the clients of Mr Nyaberi.
  3. Both the pending application and the main hearing shall be heard on priority basis.
  4. The hearing scheduled for 7<sup>th</sup> and 8<sup>th</sup> December are hereby adjourned at the instance of the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> plaintiffs in ELC No 5/2010 and 1<sup>st</sup>, 3<sup>rd</sup> - 8<sup>th</sup>, 10<sup>th</sup>, 13<sup>th</sup> - 17<sup>th</sup> defendants in ELC 128/2020.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 8<sup>TH</sup> DAY OF DECEMBER, 2022 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

**In the presence of:-**

Beatrice Kariuki for Defendant in ELC Case No. 5 of 2010 and Plaintiff in ELC Case No. 128 of 2020.

Court Assistant: Eddel/Vanilla

