



**Pius & 2 others v China Communication Company & another (Environment & Land Case E002 of 2021) [2023] KEELC 18517 (KLR) (4 July 2023) (Ruling)**

Neutral citation: [2023] KEELC 18517 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ISILO  
ENVIRONMENT & LAND CASE E002 OF 2021**

**PM NJOROGE, J**

**JULY 4, 2023**

**BETWEEN**

**KAMAIS PIUS ..... 1<sup>ST</sup> APPLICANT**

**GUYO WAKO ..... 2<sup>ND</sup> APPLICANT**

**SHINDA BORU ..... 3<sup>RD</sup> APPLICANT**

**AND**

**CHINA COMMUNICATION COMPANY ..... 1<sup>ST</sup> RESPONDENT**

**KENYA NATIONAL HIGHWAY AUTHORITY ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. This application was brought to court by way of a certificate of urgency and seeks orders;
  1. That this application be certified urgent and be heard ex-parte in the first instance.
  2. That this Honourable Court do order a stay of proceedings in Isiolo CMELC 3 of 2023 – *Tawakul Multi-purpose Cooperative Society Limited v China Communication Construction Company*, Isiolo CMELC 4 of 2023 – *Hussein Abdi & Anor v China Communication Construction Company* and Isiolo ELC Appeal No. E008 of 2023 – *China Communication Construction Company v Hussein Abdi & Anor* pending the inter parties hearing of this application.
  3. That this Honourable Court do order that Isiolo ELC 2 of 2023 – *Kamais Pius & 2 Others v China Communication Construction Company & Anor*, Isiolo CMELC 3 of 2023 – *Tawakul Multi-Purpose Cooperative Society Limited v China Communication Company* and Isiolo CMELC 4 of 2023 – *Hussein Abdi & Anor v China Communication Company* be consolidated.



4. That the Honourable Court be pleased to issue such further orders as it may deem fit in the interest of justice.
5. That the costs of this application be provided for.
2. The application is supported by the affidavit of advocate Kibaara Murithi. Mr. Kibaara in his oral address basically relied on grounds in his application.
3. When the application was heard on 4/7/2023, it had not been served upon the parties in CMELC 3 of 2023, ELC E002 of 2023 and CMELC 4 of 2023. Mr Abdullahi who represents the plaintiffs in CMELC 3 and CMELC 4 of 2023 told the court that 2 rulings were poised to be delivered today in CM's Court. One was for an injunction order and the other was for contempt. He expressed the feelings that the applicants were trying to misuse the court to run away from their responsibility especially as concerns the contempt application. He asked the court to dismiss the application. Miss Nyasani who was holding brief for Mr Mugo for the plaintiff in ELC Suit No. E002 of 2022 told the court that she had not been served with the application. She however indicated that she was amenable to allowing the court to issue any directions it deemed fit.
4. Advocate Muriuki, the advocate for the County Government of Isiolo indicated that he was not in a position to comment as the application had not been served upon him.
5. I have considered the issues raised in this matter. I opine that in the interest of justice, all concerned parties must be allowed to articulate their positions, especially with regard to the proposed consolidation. A court of law cannot enjoin parties to a suit when they do not know the issues involved.
6. The following orders are hereby issued;
  - a. Prayer 2 in the application is not granted.
  - b. Prayers 3, 4 and 5 in the application will be heard interparties.
  - c. The applicants are directed to serve all parties, including those in CMELC 3 of 2023 and CMELC 4 of 2023, with the application within 10 days of today.
  - d. The applicants advocate is directed to serve the orders issued by the court today upon parties in CMELC 3 of 2023 and CMELC 4 of 2023 within 10 days of today.
  - e. The application will be heard interparties on 24/7/2023.

**DELIVERED IN OPEN COURT AT ISIOLO THIS 4<sup>TH</sup> DAY OF JULY, 2023 IN THE PRESENCE OF; -**

Court assistant: Balози

Miss Nyasani for Plaintiff in ELC E002 of 2023.

Abdullahi for the 2<sup>nd</sup> Respondent.

Ken Muriuki for the County Government of Isiolo.

**HON. JUSTICE P.M NJOROGE**

**JUDGE**

