



Novapeku (PK) Construction and Engineering Company Limited & 2 others v County Government of Kiambu (Environment & Land Case 197 of 2018) [2023] KEELC 21670 (KLR) (2 November 2023) (Order)

Neutral citation: [2023] KEELC 21670 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE 197 OF 2018
BM EBOSO, J
NOVEMBER 2, 2023**

BETWEEN

**NOVAPEKU (PK) CONSTRUCTION AND ENGINEERING COMPANY LIMITED 1ST PLAINTIFF
PETER KURIA NJOROGE 2ND PLAINTIFF
JAMES GACHERU KARIUKI 3RD PLAINTIFF**

AND

COUNTY GOVERNMENT OF KIAMBU DEFENDANT

ORDER

1. This suit was initiated by the above three plaintiffs, acting in person, through a plaint dated 24/10/2017. The plaint was signed by James Gacheru Kariuki who designated himself as the 3rd plaintiff. On 11/7/2018, the firm of Waruhiu Kowade & Ng'ang'a Advocates came on record for the 1st and 2nd plaintiffs. On 26/4/2019, the firm of Kanyi Kiruchi & Co Advocates filed a notice of change of advocates, replacing the firm of Waruhiu Kowade & Ng'ang'a Advocates as advocates for the 1st and 2nd plaintiffs. The said law firm subsequently filed a notice of motion dated 21/8/2019 through which they sought leave to amend the plaint in terms of the draft amended plaint that they exhibited as "PKNA".
2. Among the key amendments sought to be introduced through the draft amended plaint were: (i) the purported removal of James Gacheru Kariuki [the 3rd plaintiff] from the suit; (ii) the striking out of all the particulars of loss and damages that had been itemized in paragraph 6 of the original plaint; and (iii) the striking out of prayers (a), (c), (d), (e), (f), (g), (h), (i), (j) and (k), and leaving prayers (b) and (l). The proposed amendments also introduced prayer (m).



3. The notice of motion dated 21/8/2019 which was brought by M/s Kanyi Kiruchi & Company Advocates on behalf of the 1st and 2nd plaintiffs was disposed by the Deputy Registrar of this Court [Hon Mutuku] on 20/1/2020 in the following *verbatim* terms:

“I have considered the notice of motion dated 21/8/2019. The same is unopposed. I therefore allow the same as prayed. Costs in the cause. The plaintiffs to file and serve the same within 7 days from today with leave to defendant to amend the defence if need be. Pretrial on 8/9/2020.”

4. The Deputy Registrar subsequently completed pre-trial on 24/2/2021 and listed the matter for hearing. Ex-parte hearing proceeded on 1/2/2022. Subsequently, the County Government of Kiambu filed a notice of motion dated 18/2/2022 seeking leave to file a defence and cross-examine the plaintiffs’ witness. The application was allowed on 8/6/2022.

5. When the matter subsequently came up for further hearing on 25/10/2022, Ms Sanaet, counsel for the County Government, was not ready for the hearing. Hearing was adjourned to 31/1/2023. On 31/1/2023, Ms Sanaet attended court and informed the court that she would not be leading evidence. The court adjourned the hearing to 14/3/2023. On 14/3/2023, counsel for the County Government did not attend court to cross-examine PW1. Consequently, at the behest of the plaintiffs, trial closed. The plaintiffs subsequently filed written submissions dated 6/6/2023. The court reserved a date for Judgment in the suit.

6. While preparing the Judgment, it has emerged that at the time the firm of Kanyi Kiruchi & Company Advocates purported to amend the plaint and remove the 3rd plaintiff from this suit, they were not on record for the 3rd plaintiff. The 3rd plaintiff was at all material times acting in person and was not privy to the application dated 21/8/2019.

7. It is therefore clear from the court record that the Deputy Registrar made a grave error in allowing amendments removing the 3rd plaintiff from this suit on the basis of an application that the 3rd plaintiff was not privy to. If the firm of Kanyi Kiruchi & Company Advocates had instructions from the 3rd plaintiff to amend the plaint and remove him from the suit, they ought to have first filed a notice of appointment to act for the 3rd plaintiff and thereafter file a notice withdrawing his claim.

8. As things stand now, the 3rd plaintiff cannot be said to have withdrawn his claim or to have been properly removed from this suit. Yet hearing proceeded in his absence and without notice to him.

9. For the above reason, the order reserving a date for Judgment in this matter is hereby vacated and M/s Kanyi Kiruchi & Company Advocates are directed to comply with the laid down procedure through which an advocate may withdrew a claim on behalf of a litigant who is acting in person. If this is not done within 30 days from today, the proceedings conducted in this suit in the absence of the 3rd plaintiff shall stand set aside. Similarly, the amendment purporting to remove the 3rd plaintiff from this suit shall stand expunged from the pleadings.

10. A date for further directions will be fixed at the time of reading this order.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 2ND DAY OF NOVEMBER, 2023

B M EBOSO

JUDGE

In the Presence of: -



Mr Wachira holding brief for Mr Kanyi for the Plaintiffs

Court Assistant: Osodo

