



**Pewa Africa v Gitonga & 2 others (Civil Case E031 of 2024)
[2025] KEHC 2329 (KLR) (13 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2329 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL CASE E031 OF 2024
HM NYAGA, J
FEBRUARY 13, 2025**

BETWEEN

PEWA AFRICA PLAINTIFF

AND

BENJAMIN GITONGA 1ST RESPONDENT

DANIEL KIUNGA 2ND RESPONDENT

CHRIS KABERIA 3RD RESPONDENT

RULING

1. By a curiously drawn application dated 30/09/2024 the Applicant has sought the following orders:-
 - i. Spent.
 - ii. That pending hearing and determination of this matter, the Respondents be ordered to cease acting on the said Kiguru Water Project and/or causing any interference with the project or this case.
 - iii. That the Honourable court do declare the actions of the Respondents are in breach of the contract and grant judgment in favour of the Applicant plus damages, interest and costs.
 - iv. That the Applicant pleads with the court to dispose and determine this matter on priority basis considering its association with denial/interference with provision of water, a basic need to the lives of the beneficiaries who include school children and community members.
 - v. That unless the matter is disposed and determined on a priority basis, irreparable damages, losses and lack of water which is a basic human need will be caused to the Applicant and beneficiaries.
 - vi. That the Honourable court has the requisite jurisdiction to hear and determine the matter.



- vii. That grant of the declaration, judgment, orders and reliefs prayed for will not cause any injustice or prejudice to the Respondents and will only serve to meet ends of justice.
- viii. Costs be borne by the Respondents.
2. The application is supported by the grounds set out on its face and the affidavit of P.K. Gitari sworn on even date.
3. The gist of the Applicant's application is that in 2023, he mobilised and acquired Kshs. 5.2 million funding for construction of a community water project at Nkiene area, Kiguru Location, Meru County.
4. That the Applicant undertook preliminary works which included design community engagement and intellectual property registration.
5. That the Applicant then contracted the Respondents for the implementation plan, funds and other resources to enable them complete the project.
6. That upon receipt of the funds, the 3 respondents vanished without commencing the construction. He then seeks the orders set out in his application.
7. When I stated by calling the application as curiously drafted, it is because I have noted several issues with the pleadings filed herein. The Applicant filed a plaint which only contains three paragraphs describing the parties, nothing more.
8. A plaint is the foundation of the suit commenced in that manner.
9. Order 4 of Civil Procedure Rules sets out the threshold that a plaint ought to contain inter alia, the following:-
 - a. The names of the parties and their description.
 - b. The place where the causes of action arose.
 - c. Specifically state the relief which the Plaintiff claims (Order 4 Rule 6).
 - d. Show that the Defendant is as claims to be interested in the subject matter and that he is liable to be called upon to answer to the Plaintiff's demand.
10. Looking at the plaint, it falls way short of the requirements of the law. Once served on the Defendants, they would not even know what the claim is all about.
11. I am aware that under Article 159 of *the constitution* the court ought to look at the substantive issues and avoid technicalities, but even there is no way this plaint can be allowed to stand. It fails the substantive test. It is incurably defective, no matter how sympathetic one is to be. Even amendment cannot rescue it.
12. Consequently under Order 4 Rule 1(6) of the Civil Procedure Rules and Order 2 Rule 15 of the said Rules the plaint filed herein is struck out.
13. That said, then the application has no legs to stand on as there is no suit. It is struck out as well.
14. The Plaintiff/Applicant is at liberty to file a fresh properly drawn suit.
15. There shall be no orders as to costs since the Defendants did not participate in the matter.

H.M. NYAGA



JUDGE

SIGNED, DATED AND DELIVERED AT MERU THIS 13TH DAY OF FEBRUARY, 2025.

H. M. NYAGA

JUDGE

