



Okwama v Milestones Gaming Limited & 3 others; Association of Gaming Operators in Kenya (Intended Interested Party) (Petition E016 of 2023) [2024] KEHC 6215 (KLR) (24 May 2024) (Ruling)

Neutral citation: [2024] KEHC 6215 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
PETITION E016 OF 2023
PJO OTIENO, J
MAY 24, 2024**

BETWEEN

EDWARD OKWAMA PETITIONER

AND

MILESTONES GAMING LIMITED 1ST RESPONDENT

STANDARD GLOBAL EAST AFRICA LIMITED 2ND RESPONDENT

KENYA REVENUE AUTHORITY 3RD RESPONDENT

THE ATTORNEY GENERAL 4TH RESPONDENT

AND

**ASSOCIATION OF GAMING OPERATORS IN KENYA INTENDED
INTERESTED PARTY**

RULING

1. By dint of rule 27 (2), the *Constitution of Kenya (Protection of Rights and Fundamental Freedoms (Practice and Procedure Rules)*, 2013) even where a Petitioner opts to withdraw a Petition, the ultimate decision rests with the court to allow the withdrawal or disallow the same.
2. It is common place from the reading of the file and the address by parties that the Petitioner did file a Notice of withdrawal which was placed before the Deputy Registrar and adopted without regard to the above cited *rule*.
3. That action by the Deputy Registrar was made without jurisdiction and was so declared by this court by the decision of 11.12.2023.
4. As of today, there is a Notice to withdraw the Petition that waits being acted upon by the court.



5. However, when the parties attended court on the 8/5/2024, the Petitioner told the court that he no longer wishes to withdraw the Petition but to pursue it. He in fact asked that the Notice to withdraw the Petition itself be withdrawn.
6. That request was supported by the 1st and 2nd Respondent but strenuously opposed by the 3rd and 4th Respondent as well as the Interested Parties represented by Mr. Ochieng. The Opposers asserted that it is not open to a party to merely withdraw the Notice of withdrawal without assigning any reason and that the rules provides not for withdrawal of Notices of withdrawal of Petition.
7. I get the parties to ask the court to deliver itself on whether a party who has filed a Notice of withdrawal has the liberty to seek its withdrawal.
8. To this court, withdrawal of Constitutional Petitions, before court, are regulated because of the public nature and interest such litigation take and carry. The general spirit is that if it discloses public interest then it is not upon the Petitioner to walk in and walk out as he wishes and in so walking, carry with him the fate of the Petition and the public interest with it. Public interest go beyond the person and identity of the Petitioner and the Court reserves the right to allow or disallow any request to terminate the Petition. The court takes the view that the spirit and rationale of rule 27(2) and (3) are to preserve every Petition disclosing public interest to be determined on the merit and not at the whim of the person who stepped forward to prosecute it.
9. On the same spirit, where a Petitioner withdraws, nothing stops him, her or it from coming back to be rejoined.
11. Conversely the rules do not provide for the procedure to withdraw a withdrawal because the object of rule 27 is the sustenance and preservation of Constitutional Petitions with public interest implications.
12. Having said so, the court appreciates that every litigation belongs to the parties, save for the constraints of rule 27, and that a request to withdraw a Petition in itself, in the context of rule 27, is a pleading that the owner retains rights over as a chose in action. Where a party file a withdrawal and changes his mind over the same to sustain the litigation, the court cannot compel him to prosecute the Notice of withdrawal.
13. The court finds that it has a duty, in the general spirit of Rule 27, to allow the Notice of withdrawal to be withdrawn so that the Petition proceed.
14. At the request of the Petitioner, the Notice of withdrawal dated 1st December, 2023 is marked withdrawn at the request of the Petitioner. No orders as to costs.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 24TH DAY OF MAY, 2024.

PATRICK J. O. OTIENO

JUDGE

In the presence of:-

Mr. Ndolo for the 1st Respondent

Mr. Mola for the 2nd Respondent and holds brief for Petitioner

Mr. Lemiso, with Nyaga and Ms. Githinji for the 3rd Respondent

Mr. Simiyu for Nyana for 4th Respondent

Mr. Murithi for Proposed Interested Party



Mr. Kiilu for Proposed 5th Respondent – No appearance

Court Assistant: Polycap

