



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI

CIVIL CASE NO.154 OF 2009

JOSEPH LEKAMARIO & OTHERS.....PLAINTIFFS

VERSUS

AFRICA WILDLIFE FOUNDATION & OTHERS.....DEFENDANTS

DIRECTIONS

1. On **21st November 2014** when this matter came up for hearing of the plaintiff's application dated **21st March 2014**, counsel for the 1st defendant, **Mr. Muthui** asked the court to give directions on the following issues;

1. The current application was part heard before my predecessor **Ombwayo J.** who had allowed the 1st defendant and any other party who had an interest in the matter to participate.
2. The hearing of the suit had been concluded before **Sergon J.** what remained was filing of submissions and the possibility of a site visit. Now that the said judge had been transferred to Nairobi, where save for counsel for the 2nd defendant (who had no objection) practiced, the court could consider transferring the file to Nairobi to be concluded by **Sergon J.**

In reply **Mr. Lempa** equally sought directions on the following issues;

1. Whether the application dated 24th March, 2014 could proceed in the absence of the Director of Public Prosecution and the Attorney General who were prosecuting the plaintiffs before the Nanyuki court.
2. Whether the court would allow the plaintiffs counsel to cross-examine the Director of Public Prosecution or his officers on the averments made in their affidavit.

2. I will begin by answering question 2 because question 1 and 3 are related. With regard to question 2, reference is made to the Ruling by **Sergon J** on **16th January, 2014** on the way forward in this matter. The judge listed what was pending in this matter as;

a) Site visit

b) Final submissions

3. He stated that taking into consideration the size of the land, (17,000 acres), the site visit would require a couple of days and most probably the use of a helicopter. He was of the view that these logistical challenges could only be dealt with by judges resident in Nyeri. He further noted that all proceedings had been typed and there would be no cause for delay if the case was taken over by another judge, particularly

the Environment and Land Court Judge. He concluded by directing that the file be heard by any other judge resident in Nyeri High Court.

4. To answer the third issue raised by **Mr. Lempaa**, on whether the application should proceed in the absence of the Attorney General (A.G.) and the Director of Public Prosecution (D.P.P), reference is made to **Ombwayo J's** Ruling dated 10th October, 2014 wherein he dismissed an application challenging the participation of the respondents in the application. The Director of Public Prosecution (D.P.P) and the Attorney General (A.G) had earlier been enjoined in this application on **15th July, 2014**. In the said ruling (10th October, 2014) The respondent were allowed to participate and they filed their submissions on **2nd May 2014** (3rd respondent), **29th April, 2014** (1st Defendant), and the D.P.P filed their replying affidavit on **13th August, 2014**.

5. When the application dated 24th March, 2014 came before Ombwayo J at ex parte stage, he granted interim orders on the same date barring the Chief Magistrate, Nanyuki from hearing the criminal case pending before him against the plaintiffs and a restraining order against the 3rd respondent. With the submissions duly filed by the respective parties, this court has no reason not to hear and conclude that application. Enough time has already been given to any party who is interested in filing a response and the plaintiff's counsel had even orally submitted on his application. I believe I have also answered **Mr. Muthui's** question on how the court will deal with the instant application.

6. On the last issue on whether the court will allow the plaintiff's counsel to cross-examine the Director of Public Prosecutor or his officers, I hold the view that this will not be necessary. Which ever the case, if the 3rd respondent is in disobedience of a court order then the best application to be filed by the plaintiffs before this court is an application for contempt.

7. Finally I wish to make the following observations regarding this file in general;

(i) All witnesses have testified. What remains as observed by **Sergon J** is;

a) A site visit if counsels are agreeable.

b) Final submissions.

(ii) Even as the current application is being considered directions should be taken on how to conclude this matter. This is an old file dating back to 2009. Over 20 witnesses have testified. The suit property has also changed hands several times. This matter should be brought to a conclusion.

Dated, signed and delivered at Nyeri this 4th day of February 2015

L.N. WAITHAKA

JUDGE