



**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**

**RULING**

When this matter came before me on the 23/7/2014, the applicants raised an objection as to the state being supplemented by private legal services to defend and yet the application is between the applicant and the state. Mr. **Lempaa** for the applicants argued that the private law firms should be limited to watching brief in this matter. In his opinion, the private law firms are non state actors.

Mr. **Muthui** for the first respondent argued that Mr. Lempaa arguments pointed to the incompetence of his application. Mr. Lempaa should have filed a judicial review as opposed to the application in this case because he was seeking to stop a prosecution by the state.

Mrs **Wachira** on her part associated herself with the arguments of Mr. Muthui and added that counsel had forgotten the gist of his application because prayers 2, 3, 4 touch on her client the 3rd respondent because they were accused of harassing, arresting, confiscating the applicants animals amongst other alleged wrongs.

Mr. **Kiplenge** on his part associated himself with counsels' submissions and added that there is an order that the Director of Public Prosecutor be served and the same was not be revoked. Parties are saying that their rights have been violated by the respondents hence the respondents ought to participate.

Mr. **Muthuri** for the Attorney General argued that some of the clients of the law firms have been mentioned hence they have a right to be heard.

Mr. **Njue** on his party argued that the charges were instituted by Kenya Wildlife Service hence they should participate. Moreover that the applicants should have filed a petition.

This court finds that the application by the applicants is not made in good faith because the 1st, 2nd and 3rd respondents have already appeared in this matter and have taken part in directions. Moreover the 1st and 3rd respondents have filed their respective affidavits and submissions and therefore cannot be denied reaching the seat of justice.

The application having been filed in this suit, the respondents have a right to be heard through their counsel because they are parties to the application. Mr. Muthui has argued that the applicant ought to have filed a judicial review against he Director of Public Prosecutor if his intention was to exclude the respondents from participating. This could finds that even if the applicant had filed a petition or a judicial review, the respondent still had a right to be heard in opposition as person likely to be affected by the decision of the court. **Order 53 rule 6 of the Civil Procedure Rules 2010** provides that a person who desires to be heard in opposition to the motion and appears to the court as to be a proper person to be heard shall be heard notwithstanding that he has not been served with the notice or summons.

The implication of this rule is that any person that the court deems affected by the proceedings and desires to be heard shall be heard. In this matter, the respondents are not only affected, they are parties adversely mentioned in the suit hence have a right to be heard. The application is dismissed with costs to

the respondents.

*Dated, signed and delivered on 10th day of October, 2014.*

**A. OMBWAYO**

**JUDGE**