

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
JUDICIAL REVIEW DIVISION
JR. E076 OF 2024

BETWEEN
MAYFOX MINING COMPANY LTD
.....APPLICANT

AND

CABINET SECRETARY,
MINISTRY OF MINING 1ST RESPONDENT
DIRECTOR OF MINES & GEOLOGY..... 2ND RESPONDENT
ATTORNEY GENERAL 3RD RESPONDENT
AHG METALS KENYA LTD 4TH
RESPONDENT

AND

LORADO COMPANY LTD INTERESTED
PARTY

RULING

- 1.** What is before this court for determination is the issue of whether or not the notice to withdraw this suit dated 8th August 2025 by the Exparte Applicants should be adopted as an order of the court.

- 2.** When the matter came up on 8th October 2025, the Exparte Applicant and the Respondent indicated to the court that they had consented to

the adoption of the notice to withdrawal the suit dated 8th August 2025.

3. The Interested Party was, however, opposed to the withdrawal as a result of which the court directed parties to file and exchange submissions limited to the issue of the withdrawal of the suit. That issue forms the subject of today's determination.

The Interested Parties Case:

4. In opposing the withdrawal, the interested party filed grounds of opposition.
5. It submits that the matter was supposed to proceed into hearing after court directed the filing and the exchange of submissions after which the case was supposed to come up for mention to report compliance on the 27th October 2025.
6. It invokes Order 25 Rule 2 of the Civil Procedure Rules which provides that where a suit is to be withdrawn after it has been set down for hearing, then it can only be discontinued if there is a consent signed by all the parties, or with the leave of the court.
7. According to the Interested Party, the cause of action that forms the subject of this suit is a public interest question around the grant of mineral rights as a result of which the court's mandate and jurisdiction to examine the legality, fairness and reasonableness of the decisions, acts and omissions of public bodies overrides the Applicant's interests.

8. It submits that the court should not allow the withdrawal of the suit until questions on the legality and fair administrative action as regards the decisions and actions made by the 1st and 2nd Respondents in granting mineral rights to the 4th Respondent have been dealt with.
9. Finally, the Interested Party submits that it has an independent claim in the suit. It submits that if the suit is withdrawn, it will suffer, severe miscarriage of justice and the infringement of its rights.
10. It relies on the cases of **Beijing Industrial Designing & Research Institute Vs Lagoon Development Limited (supra)**, where the Court of Appeal stated that the upholding and protection of the rule of law cannot be sacrificed at the altar of a party's alleged absolute right to withdraw its suit and the case of **Tsangawa Ngala Chome v Town Council of Mariakani another 2016 KEELC 1074 (KLR)** to advance its argument against the withdrawal of the suit.

The Exparte Applicants' Case:

11. It submits that the Interested Party's objection is misconceived in law, contrary to settled procedural principles, and the same amounts to an abuse of process.
12. As the initiator, as the initiator of these Judicial Review proceedings, The Applicant retains the exclusive right and prerogative to control, manage, and withdraw its cause at any stage before judgment.
13. It is further its case that the grounds raised by the Interested Party that it is entitled to have its cause adjudged, that it has "raised

questions against the 1st and 2nd Respondents,” and that “public interest” warrants continuation is legally untenable and unsupported by authority.

14. The right of withdrawal is therefore substantive, personal, and unfettered. The only role of the court upon such withdrawal is to record the withdrawal and determine costs.
15. It invokes Order 25 Rules 1 and 2 of the Civil Procedure Rules, 2010, which state:

Rule 1: “At any time before the setting down of the suit for hearing, the plaintiff may by notice in writing wholly discontinue his suit... and such discontinuance or withdrawal shall not be a defence to any subsequent action.”

Rule 2: “Where a suit has been set down for hearing, it may be discontinued upon filing a notice of withdrawal and upon such terms as to costs as the court may order.”

16. **Reliance is placed in the case of Njau v City Council of Nairobi [1982] eKLR**, where the Court held:

“A plaintiff is dominus litis of his case and cannot be compelled to proceed with a case he no longer wishes to prosecute.”

17. It also relies on the case of **Beatrice Wanjiku & Another v Attorney General & Another [2012] eKLR**, the High Court observed:

“Litigation is driven by the party who invokes the jurisdiction of the court. Where that party expresses an unequivocal intention to discontinue, the court cannot compel it to proceed against its will.”

18. It is settled that the Plaintiff or Applicant, being the dominus litis (master of their case), has the right to control the proceedings they have commenced, including the discretion to discontinue or withdraw them.
19. Reliance is placed in the cases of the **Supreme Court in Francis Kariuki Muruatetu & Another v Republic & 5 Others [2016] eKLR** (para. 37) defined an Interested Party as:

“A person who has a stake in the proceedings, though not a party to the cause. An Interested Party may not frame its own issues for determination by the court.”

20. The Interested Party cannot, therefore, convert itself into a substantive litigant once the principal Applicant withdraws.
21. The **Supreme Court in Methodist Church in Kenya v Mohamed Fugicha & 3 Others [2019] eKLR** reinforced this point:

“An Interested Party cannot continue to prosecute or sustain proceedings in its own name once the main cause has been withdrawn or determined.”

- 22.** The Interested Party has no independent cause of action before this Court. Its involvement was limited to assisting the Court to appreciate the factual matrix. Once the main cause is withdrawn, there is no live dispute left.
- 23.** It submits that if it believes that the 1st and 2nd Respondents have infringed its rights, the proper legal course is to file its own Judicial Review or Constitutional Petition. It cannot appropriate another litigant's cause.
- 24.** The High Court in **Republic v Public Procurement Administrative Review Board Exparte Syner-Chemie [2016] eKLR** observed:

“An Interested Party cannot transform itself into a substantive Applicant once the original Applicant opts out. The remedy lies in filing independent proceedings.”

- 25.** It is its case that to compel Mayfox to continue proceedings it no longer wishes to pursue would be to undermine the principles of party autonomy and fair trial under Article 50(1) of the Constitution.

The Respondent's Case;

- 26.** It submits that Order 25 of the Civil Procedure Rules, 2020 which provides generally for the withdrawal of civil suits by a plaintiff are wholly inapplicable since the current Judicial Review Application was brought under the Constitution, the Fair Administrative Action Act, 2015 and the FAA Rules.

27. It further submits that Interested Party, does not possess an independent right to alter the course of the proceedings. Consequently, where the principal party withdraws from the suit, the Interested Party cannot sustain the claim independently. Its role remains ancillary and supportive, not directive.
28. The matter is one of judicial review and is governed by a distinct legal framework, namely, the Fair Administrative Action Rules 2024 (FAA Rules), as opposed to the Civil Procedure Rules, 2020.
29. Reliance is placed in the case of **Trusted Society of Human Rights Alliance v Mumo Matemu & 5 Others [2014] 1 eKLR, SC Petition No. 12 of 2013**, the Supreme Court defined an Interested Party thus in paragraph:

“A person who has a stake in the proceedings, though not a party to the cause. Such a person must demonstrate a personal interest or stake in the matter, must be identifiable, and must demonstrate that the interest is clearly identifiable and proximate enough to stand apart from the interest of the general public.”

30. In the present case, upon becoming aware of the proceedings, the Interested Party applied to be joined.
31. Under Regulation 9 of the Fair Administrative Action (Judicial Review Procedure) Rules, it could have filed a separate judicial review Application, which the Court could have consolidated with the Applicant's case. Alternatively, it could have sought joinder as a

substantive Respondent, thereby acquiring the right to make substantive prayers and actively shape the course of the proceedings.

32. Having made a deliberate choice to join as an Interested Party, it is submitted, it cannot now be heard to complain that the Applicant seeks to discontinue the suit.
33. In **Salat v Independent Electoral and Boundaries Commission & 7 others (Application 16 of 2014) [2014] KESC 12 (KLR)**.

“A party's right to withdraw a matter before the court cannot be taken away. A court cannot bar a party from withdrawing his matter. All that the court can do is to make an order as to costs where it is deemed appropriate.”

34. Under Rule 36 of the FAA Rules, it is the unfettered prerogative of Mayfox to withdraw the suit at any time before judgment.
35. According to the tenor of the provision, at any time before judgment, the Applicant may, by writing served on all parties, discontinue the judicial review proceedings wholly or in part against all or any of the Respondents.
36. It is its case that this withdrawal takes effect upon filing and service of the Notice of Withdrawal.
37. It is not a requirement that the court must grant leave before the Court suit can be marked as withdrawn.

- 38.** It is its case that Rule 23 of the FAA Rules does not envisage a scenario where leave of the Court is required to effect withdrawal. Accordingly, as of 8 August 2025, the judicial review suit stood withdrawn. Such as withdrawal, remains paramount and cannot be overridden by an Interested Party.
- 39.** It further submits that Regulation 9 of the FAA Rules, permits one or more Applicants to institute judicial review proceedings where they are aggrieved by an administrative action or decision.
- 40.** According to the tenor of the provision,
- “A claim for judicial review may be filed by one Applicant or by several Applicants where more than one person is affected by the administrative action or decision to be challenged.”*
- 41.** Once judicial review suits are filed, the Court retains discretion to consolidate related matters or direct that they be heard together. This procedural flexibility allows each Applicant to maintain control over their own proceedings. However, where a party elects to join an existing suit in the capacity of an Interested Party, whether in support or opposition to another party's claim, they assume a limited role. Consequently, such a party cannot validly oppose the Applicant's decision to discontinue the suit.
- 42.** It maintains that the current objection to the withdrawal of the suit is a veiled attempt to circumvent the statutory limitation period for filing judicial review Applications. Regulation 6(1) of the FAA Rules provides that an Applicant seeking to quash an administrative action,

or decision must commence judicial review proceedings within six weeks from the date the administrative action was taken.

Analysis and Determination:

43. The issue for determination is whether an interested party can object to the withdrawal of a suit.
44. In the case of **Methodist Church in Kenya v Mohamed Fugicha & 3 others [2019] eKLR**; the court cited various cases and statutes to elaborate on who an Interested Party is and the role of an Interested Party.
45. The Mutunga Rules define ‘Interested Party’ as:

“a person or entity that has an identifiable stake or legal interest or duty in the proceedings before the court but is not a party to the proceedings or may not be directly involved in the litigation” (paragraph 41 page 7)
46. **Trusted Society of Human Rights Alliance v. Mumo Matemu & 5 others, Petition No. 12 of 2013 [2014] eKLR** an interested party was defined as, ‘Interested Party’ as ‘*A party who has a recognizable stake (and therefore standing) in a matter (paragraph 42 page 7).*
47. The court noted that the High Court can join interested parties to proceedings, where necessary and cited the case of *Meme v Republic* where the High Court observed that a party could be enjoined in a matter on the basis of considerations such as: -

- i. joinder of a person because his presence will result in the complete settlement of all the questions involved in the proceedings;
- ii. joinder to provide protection for the rights of a party who would otherwise be adversely affected in law;
- iii. joinder to prevent a likely course of proliferated litigation.” (paragraph 43 page 8).
- iv. An Interested Party may not frame its own fresh issues or introduce new issues for determination by the Court. (paragraph 53 page 9).

48. In the case of **Judicial Service Commission v. Speaker of the National Assembly and Attorney General**: *An Interested Party as opposed to an amicus curia or a friend of the court may not be wholly indifferent to the outcome of the proceedings in question. He is a person with an identifiable stake or legal interest in the proceedings hence may not be said to be wholly non-partisan as he is likely to urge the court to make a determination favourable to his stake in the proceedings. (paragraph 44 page 8).*

49. In the instant suit, the court is satisfied that the Interested Party does not have the same authority over the direction that the suit should go.

50. Where the principal parties intend to mark the suit as settled or withdrawn as is the case here, that leaves the interested parties with nothing to peg their case on.

- 51.** The Interested Party cannot bar or not stop the principal parties from expressing their desire or resolve as signified in the withdrawal.
- 52.** Where the principal party or the Exparte Applicant has lost interest in the Suit then the Interested Party no longer has any business with a suit.
- 53.** The court notes that an Interested Party who feels like they have an interest in the cause of action reserve and have the liberty to file an independent suit to advance their cause so long as it is within the statutory timelines under the Limitation of Actions Act or Order 53 of the Civil Procedure Rules.
- 54.** The Interested Party cannot claim to have the substantive locus to advance a public interest suit in its legal status as an Interested Party. This is what the court held in the Mohamed Figicha case (supra).
- 55.** The Interested Party has the liberty to institute independent proceedings under Articles 22 or 258 of the Constitution if it believes it has a public interest it intends to advance and I so hold.
- 56.** Order 25 of the Civil Procedure Rules, 2020 provides for the withdrawal of civil suits by a plaintiff. However the said provision is inapplicable since the Judicial Review Applications are initiated under Order 53 of The Civil Procedure Rules or The Fair Administrative Action Act, 2015 and the FAA Rules.
- 57.** In any event Judicial Review proceedings have a special type of legislative framework which finds its regulation in Order 53 of the

Civil Procedure Rules which complete procedural and substantive structure. Order 25 of the said Rules flows on its own in regulating regular Civil suits and away from Judicial Review proceedings and I so hold.

58. In conclusion the court addresses its mind to the issue of costs. I am of the view that where a suit is withdrawn, the Interested Party is entitled to costs if they had engaged in the suit and I so hold.

Disposition:

59. The Exparte Applicant and the Respondent cannot be barred from entering into a consent to mark the suit as withdrawn.

Order:

- 1) The Exparte Applicant is at liberty to withdraw the suit.
- 2) Costs to the Interested Party.

Dated, signed and delivered at Nairobi this 6th day of November, 2025.

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**J. CHIGITI (SC)
JUDGE**