

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ELC PETITION NO. 15 OF 2019
BETWEEN

RUFUS MULATYA MUATHE & OTHERS.....
PETITIONERS

-VERSUS-

KENYA PIPELINE COMPANY LIMITED..... 1ST
RESPONDENT

NATIONAL ENVIRONMENTAL MANAGEMENT AUTHORITY
(NEMA)..... 2ND RESPONDENT

THE CABINET SECRETARY, MINISTRY OF
ENVIRONMENT..... 3RD RESPONDENT

THE CABINET SECRETARY, MINISTRY OF
HEALTH..... 4TH RESPONDENT

THE CABINET SECRETARY, MINISTRY OF ENERGY AND
PETROLEUM..... 5TH RESPONDENT

THE HON. ATTORNEY GENERAL..... 6TH RESPONDENT

RULING

1. This is a ruling in respect of Notice of Motion dated 24th October, 2025 in which the firm of Maanzo & Co. Advocates who are the Applicant are seeking the following orders:

1) Spent

2) Spent

3) That the purported notice of withdrawal dated 21st March, 2025 be struck out and/or dismissed in its entirety for being fatally defective, fraudulent, illegal and a nullity ab initio; and that all pleadings, documents and notices filed pursuant to or arising from the said forged and fraudulent signatures be forthwith dismissed and expunged from the record of this honourable court, as their continued presence offends the integrity of the court process and amounts to an abuse of the due process of law.

4) That the costs of application be provided for.

2. The Applicant contends that the Respondent has purported to file a notice of withdrawal of petition dated 21st March, 2025 in which he is seeking to withdraw his petition and that of 44 other petitioners who are named in the withdrawal notice. The Applicant contends that the Respondent has included some petitioners whose signatures have been forged and that he has also taken advantage of economically vulnerable petitioners who have appended their signatures to the withdrawal notice.
3. The Applicant further contends that the action by the Respondent is intended to occasion economic loss given the fact that the Applicant has not been paid its outstanding legal fees. The Applicant states that the Respondent should have filed an application seeking to be allowed to withdraw the petition as the petition is a public interest litigation which affects more than 2000 petitioners whose rights to fair hearing will be prejudiced if the withdrawal is allowed.
4. The Applicant states that petitioner number 1 and number 25 bear the same name but signatures are different indicating that there was forgery or manipulation. The Applicant also states that petitioner number 7 and 34 are deceased and that it is unclear on how they consented to the withdrawal of the petition. The Applicant further states that some petitioners visited their offices and denied ever consenting to the withdrawal of the petition. They swore affidavits to that effect.
5. The Applicant states that they made a report of forgery to Makueni Police Station against the Respondent who is being pursued. The Applicant states that some of the petitioners who appended their signatures to the withdrawal notice may not have known the reason why their signatures were sought and that the withdrawal notice is an attempt by the Respondent to give instructions to another advocate notwithstanding its diligence in prosecuting the petition and expending a lot of resources on it.
6. The Applicant's application was opposed by the 45 petitioners listed in the withdrawal notice based on grounds of opposition dated 12th November,

2025. The Respondent contends that the application is incompetent as it seeks to invoke the provisions of the Civil Procedure Rules contrary to Rule 3(8) and Rule 32 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) practice and procedure Rules 2013 (Mutunga Rules).
7. The Respondent states that the Applicant has no locus standi to bring this application as the Respondent and his co-petitioners have already withdrawn their instructions and proceeded to apply to withdraw the petition.
 8. The Respondent states that the Applicant is abusing the court process in seeking to get his fees by filing a frivolous application after the Respondents and his co-petitioners have exercised their right to change their lawyer. He states that he properly invoked Rule 27 (1)(a) of the Mutunga rules in withdrawing the petition.
 9. The Respondent contends that the allegations of forgery are unsubstantiated and that if any of the Respondents co-petitioners had died, it was upon the Applicant to substitute them and not to file an application after instructions have been terminated from the law firm.
 10. The Respondents states that the Applicant has already filed an advocate/client bill of costs and should not have filed this application which is self seeking as can be demonstrated by its application dated 24th October, 2025 in which it seeks stay of the withdrawal notice pending determination of that application.
 11. The parties were directed to file written submissions. The Applicant filed its submissions dated 24th November, 2025. The Respondent filed his submissions dated 18th November, 2025. The 3rd to 6th Respondent filed their submissions dated 8th January, 206.
 12. I have carefully considered the Applicant's application as well as the opposition to the same by the Respondent. I have also considered the submissions by the parties. The main issue which emerges for determination

is whether the notice of withdrawal dated 21st March, 2025 should be struck out and all other consequential documents filed expunged from the record.

13. The petitioners in this petition filed a petition dated 2nd September, 2019 against the Respondents. This petition was filed by 64 petitioners who gave authority to the Respondent to plead and sign all documents on their behalf. The petition was later amended on 11th November, 2021 bringing in additional petitioners.

14. The petition took long to prosecute until the petitioners and others became impatient with their lawyer. The Respondent and 44 other petitioners filed a notice of intention to act in person and subsequently filed a notice of withdrawal of the petition. The Respondent and the other petitioners appointed the firm of Muriithi S. Kiragu & Co. Advocates to act for them.

15. Rule 27 (1) (a) of the Mutunga Rules provides as follows:

(1) The petitioner may—

“On notice to the court and to the respondent, apply to withdraw the petition”.

16. The Respondent had the authority from the 44 petitioners to seek withdrawal from the petition. The Respondent is not seeking to withdraw the entire petition. It is the Respondent and the others who are seeking to withdraw from the petition. Rule 27 (2) of the Mutunga Rules provides that the court has to hear the parties and make a decision on the legal effect of the decision. An application for striking out the rule is not envisaged by the Mutunga Rules.

17. A litigant who has instructed an advocate and subsequently is unhappy with that advocate is at liberty to withdraw from that advocate. A litigant cannot be forced to remain with an advocate he is not happy with. In the instant case, the Respondent and 44 others have already withdrawn instructions from Maanzo & Co. Advocates and have proceeded to withdraw from the petition affecting them.

18. The firm of Maanzo & Co. Advocates have already filed an advocate/client bill of costs for taxation. The firm cannot therefore file an application seeking to strike out the notice of withdrawal. In **Gachiengo –vs- Republic**, the Court of Appeal held that an advocate's authority emanates from client instructions, and once withdrawn, the advocate ceased to have authority to represent or take steps in the proceedings.
19. Section 58 (1) of the Advocates Act provides that a client may discharge an advocate at any time. Once a client discharges an advocate, the advocate ceases to have authority over that client. The remedy of an advocate whose instructions are withdrawn lies in taxation as was held in the case of **Republic –vs- Advocates Disciplinary Tribunal Exparte Apollo Mboya (2019) KEHC 6379 (KLR)**.
20. The Applicant is contending that the signatures of some of those who withdrew the instructions were forged and that some are dead. If that be the case, there is no basis upon which this court can make a finding of forgery in absence of forensic examination of the alleged signatures. If any of the parties had died, this has not been substantiated and it was upon the Applicant to inform the court to either wait for substitution or strike out their names if their estate was not willing to pursue the matter.
21. This application has been brought by the firm of Maanzo & Co. Advocates who do not have instructions to represent the Respondent and 44 others. If those who have sworn affidavits denying that they appended their signatures, they are at liberty to pursue that as individuals not through the firm of Maanzo & Co. who no longer have instructions to represent those who wish to withdraw their petition. This is a Civil Court with no jurisdiction to determine matters of a criminal nature. As the deponents of the supporting affidavits state, the issue of forgery is with the proper investigative agencies who are yet to come up with their decisions whether there was forgery or not.

22. From the above analysis, I find that the Applicant's application is without merit. I proceed to dismiss the same with costs to the Respondent.

It is so ordered.

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HON. E. O. OBAGA

JUDGE

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 12TH DAY OF MARCH, 2026.

IN THE PRESENCE OF:

Mr. Maanzo, Mr. Hassan and Mr. Mbulu for Petitioners.

Mr. Odongo for 3rd to 6th Respondents.

Ms. Kauria for Mr. Ngala for 2nd Respondent.

Mr. Muriithi for some petitioners.

Mr. Mugun for 1st Respondent.

Court assistants – Musyoki and Nyaanga