



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT KERICHO

PETITION NO 4 OF 2013

KIBET ARAP CHERUIYOT AND 22 OTHERS.....
PLAINTIFFS

VERSUS

DISTRICT PHYSICAL PLANNING OFFICER, KERICHO AND 5 OTHERS
RESPONDENTS

RULING

(Petition by several persons; one of the petitioners purporting to withdraw the petition for all petitioners; no authority to do so; notice of withdrawal to only be regarded as affecting the one petitioner; other petitioners at liberty to continue with the petition).

1. The substantive suit herein is a Constitutional Petition filed on 30 September 2013. As originally filed, the petition had four petitioners namely Stephen Kiprono Birir (Suing as the Trustee of Kericho Craft Centre), Barchok arap Koske, George arap Milgo, and Kibet arap Cheruiyot (Suing as Trustees of Serseren Konyor Men Group). The case of the petitioners as originally presented was a claim to ownership of various parcels of land in Chesinende Market Centre which the petitioners alleged to have been allocated sometimes in the early 1990s. The supporting affidavit to the petition was sworn by Stephen Kiprono Birir.

2. Through an application filed on 9 April 2014, the petitioners, through Stephen Kiprono Birir, sought to amend the petition inter alia to include other petitioners to bring the number of petitioners to 23. That application was allowed. In that application, Stephen Kiprono Birir annexed an authority signed by the other petitioners authorizing him to plead, testify and act on their behalf in the suit. However, on 30 July 2015, Stephen Kiprono Birir, filed a notice withdrawing the petition. He averred in the notice that he is the petitioner in the suit and has withdrawn the whole petition against the respondents.

3. The action by Stephen Kiprono Birir has now prompted the other petitioners to file an application that they be allowed to continue with the petition. They have averred that the notice of withdrawal should only affect Stephen Kiprono Birir and they have stated that the notice of withdrawal of the petition did not have the blessings of the other petitioners.

4. I have considered the application and I am inclined to allow it. It must be appreciated that Stephen Kiprono Birir was not the only petitioner in this suit. He had been given authority by the other petitioners to swear affidavits and deal generally with the suit. However, he could not withdraw the petition for the other petitioners without them having given him authority to do so. Stephen has indeed not demonstrated any direction by the other petitioners asking him to withdraw this petition. If he felt that he no longer

wished to pursue the petition, he could only withdraw the petition in so far as it touches on his person only.

5. I therefore order that the notice of withdrawal of petition be deemed to be a notice of withdrawal only for Stephen Kiprono Birir. The petition will be deemed as alive in so far as the other petitioners are concerned and they are at liberty to appoint one of their own to plead and act generally on their behalf.

6. For the above reasons, I allow the application. The costs thereof will be shouldered by Stephen Kiprono Birir who clearly had no authority to discontinue the petition.

7. It is so ordered.

Dated, signed and delivered in open court at Kericho this 3rd day of February, 2017

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

KERICHO

PRESENT

Ms. Kitur holding brief for Mr. Miruka for 2nd – 23rd Petitioners/Applicants

No appearance on part of Respondents

Court Assistant; Wambany