



**Musembi & another v Kenya Power & Lighting Company Limited (Environment & Land Case 537 of 2011) [2015] KEELC 851 (KLR) (24 April 2015) (Ruling)**

*John Safari Musembi & another v Kenya Power & Lighting Co.Ltd [2015] eKLR*

Neutral citation: [2015] KEELC 851 (KLR)

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MOMBASA**

**ENVIRONMENT & LAND CASE 537 OF 2011**

**AA OMOLLO, J**

**APRIL 24, 2015**

**BETWEEN**

**JOHN SAFARI MUSEMBI ..... 1<sup>ST</sup> PLAINTIFF**

**KAMENE KAMAU ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**KENYA POWER & LIGHTING COMPANY LIMITED ..... DEFENDANT**

**RULING**

1. This ruling is a determination in respect of the Chamber Summons dated 6.2.2015 where the firm of Mogaka, Omwenga & Mabeya advocates seeks to be discharged from representing the plaintiffs. The reason for the order sought is brought out on the grounds listed on the face of the application and the supporting affidavit sworn by Brian Monari.
2. The application was served on the plaintiffs and the defendant's advocates. There is no response from the 2<sup>nd</sup> plaintiff who was served on 18th February 2015 as per the affidavit of service filed on 5th March 2015. The defendants have opposed the summons by their notice of objection filed on 24th February 2015. The objection states that the 1<sup>st</sup> plaintiff never instructed the firm seeking to cease acting therefore his name should be struck out from the suit. Secondly that the court should give directions as to who pays the cost of this suit by the 1<sup>st</sup> plaintiff and
  - i) 2<sup>nd</sup> plaintiff
  - ii) The firm of Mogaka, Omwenga & Mabeya advocates.
3. I have considered the issues raised by the submissions. The plaint as filed is indicated to be brought by the two plaintiffs. The advocates for the plaintiffs seek to cease acting because they no longer have instructions from the plaintiffs. The 2<sup>nd</sup> plaintiff who signed the documents in these pleadings was



served but she has not challenged the said application. It would be against the interest of justice that this court would refuse to discharge the applicants when they have no instructions to move this case a step further. The respondents worry in terms of who will pay the costs can be taken care of by section 27 of the *Civil Procedure Act* which gives this court discretion to determine by whom and out of what property and to what extent such costs are to be paid. In this instance such a determination can only be made at the conclusion of this case. It is premature for the defendant to ask this court to make such determination now.

4. Finally on the concern by the respondent on how to effect service once the applicants have withdrawn from acting for the plaintiffs, in the affidavit of service sworn by Alex Philip Nzuki and filed in court on 5.3.2015 the plaintiffs are indicated to be working with NHIF. The 1<sup>st</sup> plaintiff works in the Mombasa branch while the 2<sup>nd</sup> plaintiff works in the Mtwapa branch. They can easily be served personally from their work places. The court will only give order for service through the post if they are found not to be working with NHIF as indicated in the affidavit of service on record.
5. In conclusion, I find the application seeking orders to cease acting as merited and I allow it as presented.

**DATED AND DELIVERED IN OPEN COURT AT MOMBASA THIS 24<sup>TH</sup> DAY OF APRIL 2015.**

**A. OMOLLO**

**JUDGE**

**24. 4.2015**

