



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET**

**E&L PET 6 OF 2013**

**(Formerly HC Petition 8'B'/2012)**

**JOSEPH M. KURUI & 2 OTHERS.....PETITIONERS**

**VS**

**MINISTRY OF FORESTRY & WILDLIFE & 4 OTHERS.....RESPONDENTS**

***(Application to have name of representatives in a constitutional petition changed; applicants stating that they are the new representatives as the previous representatives no longer have an interest in the petition; no application to withdraw from the petitioners said to be no longer interested; new litigants sought to be introduced; no application from the new litigants seeking to be enjoined to these proceedings; no authority annexed by the applicants that they are now mandated to represent the petitioners in place of the original representatives; application dismissed)***

**RULING**

This is an application dated 29/01/2014 made to replace Joseph M. Kurui, Benjamin R. Rotich, and John K. Kimosop the named petitioners, with Simon K. Yano, Elijah Kaino Kimulwa and John C. Kaino as the new petitioners. The application is said to be brought pursuant to the provisions of Order 1 Rule 10 of the Civil Procedure Rules, 2010, Section 3A of the Civil Procedure Act, CAP 21, and Rule 5 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013.

The petition itself was filed on 1/8/2012.

This petition as I appreciate it, was filed by the three persons sought to be substituted, on behalf of themselves and others, being 240 persons all inclusive. The list of the 240 persons was annexed to the Petition and all of them signed against their names as having given permission to the three named petitioners to pursue this suit on their behalf. That was akin to an authority to file and pursue the Petition. In the Petition, it is contended that the petitioners are occupants of Kewabus glade in Embobut Forest. It is averred that in the year 2009, the Government established a task force to come up with a list of names of squatters to be resettled, but that the names of the petitioners was omitted from the list, yet they are genuine squatters who deserve to be resettled. In the Petition, they have asked for orders inter alia that the task force appointed by the respondents be declared unconstitutional and for an order of mandamus directing the respondents to embark on an all inclusive inquiry and identify the genuine squatters of Embobut forest.

In this application, it is averred that in the year 2013, the respondents formed a new expanded task force and some more persons were added to the list of squatters to be compensated. Among those who were added to the new list were the three representatives of the petitioners and other persons, being 104

persons all inclusive, from among the petitioners. Simon K. Yano, in his supporting affidavit to this application, has stated that despite the new expanded list, he and other genuine squatters were again left out without justification. He has averred that the "petitioners being fully compensated" have no further claim against the respondents. He has deponed that in a meeting held on 12 December 2013, it was agreed that he, Elijah Kaino Kimulwo and John C. Kaino, pursue the suit on behalf of all those who had been omitted in the second registration. A copy of the minutes of the meeting were annexed. He also annexed a list of "The Left Out Ndorobos" (presumably the squatters) bearing 356 names, and a list of "members who were compensated" bearing 104 names.

Mr. A.M. Ngigi for the petitioners sought to have the application allowed. Mr. J.M. Ngumbi for the State Law Office, who act for the respondents, did not oppose the application. I pronounced that although the application was unopposed, I needed to be satisfied that it is an application that is permissible by the law.

I have considered the application. I think it is a misnomer for the three persons seeking to be placed on record as the petitioners, to state that the three persons sought to be replaced are the sole petitioners, or to deem themselves to be the sole petitioners. That is not the position. This petition was not filed only by three persons. It was filed by 240 persons. The three persons Joseph M. Kurui, Benjamin R. Rotich, and John K. Kimosop, were only acting as representatives of the 240 persons. The petitioners are not therefore only the three representatives, but the 240 named petitioners.

The reason given for this application, is that the original representatives and some other persons in the original list of 240 petitioners, have been compensated and therefore no longer have any further claim against the respondents. If that is the position, then what is required to be filed is a notice to withdraw the petition, by the persons who feel that they have been fully compensated, and who no longer have an interest in this petition. The effect of that will be to leave in the suit, only the persons who still want to continue with the litigation. Unless there is a notice of withdrawal, or some document which leaves me with no doubt that the 104 compensated persons, no longer have an interest in this petition, it will be unsafe for me to assume so, for that would mean that any person can file an application, without annexing any supporting material, that a person named as petitioner, no longer has interest in a petition or suit. That will be a dangerous precedent. It is important that the litigant himself or his counsel be the one to file a document of withdrawal.

The second issue that I feel I need to address, is that the applicants have put forth a second list bearing 356 names. It is said that these too were left out in the second task force. There is however no application by these persons to be enjoined to these proceedings. I am unable to assume, without there being a proper application for joinder, that the petition now has an additional 356 petitioners who were not named in the initial petition. If the 365 persons feel that they are interested in this petition, they have to file an application to be enjoined.

When the petition was first filed, the 240 persons signed a document giving permission to the original three persons to represent them in this suit. The applicants herein have not annexed any document from the petitioners giving them authority to represent them. What they annexed are minutes of a meeting in which it is said that they were appointed. I have looked at the minutes. They are minutes of a meeting held on 12 December 2013. Only 8 persons were present in that meeting. I find it difficult to assume that the 240 petitioners gave permission to the applicants herein to continue this suit based on a meeting that they did not attend.

I need to stress that any litigation must be filed by a person who is himself identifiable, or if the individual is representing a group of persons, then that group of persons must be defined, so that it is possible to know who bears the benefit or liability of the litigation. The petition as filed is clearly brought by 240 persons through three representatives. However, that is sought to be changed in this application. But it is not clear from the proposed changes whether the applicants have permission from the petitioners to have them represent the rest of the petitioners. Neither can I also allow the petition to be deemed to now be a petition by a new group of 356 persons without an application for joinder.

For the above reasons, I find that this application is incompetent.

I dismiss it but with no orders as to costs.

**DATED AND DELIVERED AT ELDORET THIS 17TH DAY OF MARCH 2014**

**JUSTICE MUNYAO SILA**

**ENVIRONMENT AND LAND COURT AT ELDORET**

*Delivered in open court in the presence of:*

*Mr. A.M. Ngigi for the applicants.*

*Mr. J.M. Ngumbi for the respondent.*