



**REPUBLIC OF KENYA**

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

**LAND CASE NO. 97 OF 2014**

**GEORGE KAMAU KIMANI & FOUR OTHERS:.....PLAINTIFFS**

**VERSUS**

**THE COUNTY GOVERNMENT OF TRANS-NZOIA & ANOTHER:.....DEFENDANTS**

**R U L I N G**

1. At the hearing of a Preliminary Objection filed by the County Government of Trans-Nzoia in respect of the plaintiffs notice of motion dated 10/6/2014 an objection was raised by the plaintiffs advocate against the participation of Professor Sifuna in this matter. Professor Sifuna is the advocate acting for the County Government of Trans-Nzoia. The ground for the objection of Professor Sifuna's participation in the matter is that the plaintiffs are likely to call him as a witness. The plaintiff s invoked the provisions of Rule 9 of the Advocates Rules.
2. Before I go on to the merits of the application, I will lay a brief history of this matter which led to the present application. The plaintiffs herein had filed Environment and Land Case No. 66 of 2013 against the County Government of Trans-Nzoia.The plaintiffs filed a notice of motion in that suit in which they sought preservative orders preserving the houses in which they were staying pending the determination of their suit. The County Government of Trans-Nzoia through Professor Sifuna opposed the application on the grounds that the suit was irregularly filed filed against the County Government. The opposition by Professor Sifuna was sustained. This resulted in the dismissal of the plaintiffs notice of motion as well as the entire suit.
3. The County Government of Trans-Nzoia then moved to evict the plaintiffs now that the suit against them had been dismissed. The plaintiffs who were then being represented by Mr Kiarie of Kiarie & CO. Advocates called Mr Kiarie and informed him that they were being evicted. Mr Kiarie went to the suit premises and indeed confirmed that the County Government had started evicting the plaintiffs. It was agreed that the eviction would be stopped if the five occupants of the houses undertook to vacate the houses at a specified time.
4. The ruling dismissing the plaintiffs suit was delivered on 4/6/2014 and the County Government moved to evict the plaintiffs on 9/6/2014. Mr Kiarie and the 5 plaintiffs proceeded to the offices of the County Secretary where he wrote an undertaking that the 5 plaintiffs were to move out of the houses on or before 11/6/2014. The undertaking was signed by all the five plaintiffs.
5. The plaintiffs did not move out as undertaken. They instead moved to court on 10/6/2014 and filed a fresh suit against the County Government of Trans-Nzoia and the National Housing Corporation. They also filed a notice of motion seeking orders of preserving the status quo until the hearing of the application inter-partes. Professor Sifuna then filed a notice of preliminary objection against the plaintiffs notice of motion. It is at the hearing of this preliminary objection

- that the plaintiffs advocates objected to the participation of Professor Sifuna in this matter.
6. The Plaintiff/Applicants contend that Professor Sifuna was present when Mr Kiarie signed the undertaking of 9/6/2014 and that they are likely to call him as a witness.They therefore argue that he cannot act for the County Government.
  7. Professor Sifuna opposed the application by the plaintiffs on the ground that he did not take part in the writing of the undertaking by Mr Kiarie and that he is not mentioned in the undertaking. He argued that he is merely acting for the County Government. He contends that the undertaking by Mr Kiarie speaks for itself and that there is no need for any oral evidence to add to its contents.
  8. I have considered the application by the plaintiffs as well as the objection by the counsel for the County Government of Trans-Nzoia. I have now to decide whether Professor Sifuna should be barred from representing the County Government of Trans-Nzoia. Rule 9 of the Advocates Rules provides that an Advocate should not act for a party in a matter where he is likely to be called as a witness.
  9. In this case, Mr Kiarie who has already been cross – examined regarding the undertaking he signed stated that Professor Sifuna was invited to the meeting where he wrote an undertaking on behalf of his clients. Though Professor Sifuna was invited, there is nothing to show that he had any role in the undertaking which Mr Kiarie wrote. Mr Kiarie claims that he signed the undertaking under duress from the County Secretary. He did not say that Professor Sifuna was instrumental in the whole issue.In the circumstances, I do not see how Professor Sifuna will be required to be a witness to the plaintiffs. The undertaking is clear. Professor Sifuna is not going to say anything to add to the same. It speaks for itself. In the circumstances, I find that there is no basis for barring Professor Sifuna from acting for the County Government of Trans-Nzoia.The application by the plaintiffs is hereby dismissed with costs to the County Government of Trans-Nzoia.

It is so ordered.

**Dated, signed and delivered at Kitale on this 29th day of September, 2014.**

**E. OBAGA**

**JUDGE**

In the presence of Mr Nyamu for Plaintiff and M/s Arunga for 2nd defendant and Professor Sifuna for the 1st defendant. Court Clerk –Kassachoon.

**E. OBAGA**

**JUDGE**

**29/9/2014**