



**Republic v Assistant County Commissioner & 2 others; Lesidai & 3 others
(Interested Parties); Kiseet & 2 others (Exparte Applicants) (Judicial
Review E001 of 2023) [2024] KEELC 4179 (KLR) (21 May 2024) (Ruling)**

Neutral citation: [2024] KEELC 4179 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
JUDICIAL REVIEW E001 OF 2023**

**EM WASHE, J
MAY 21, 2024**

BETWEEN

REPUBLIC APPLICANT

AND

ASSISTANT COUNTY COMMISSIONER 1ST RESPONDENT

KIRINDON DIVISION 2ND RESPONDENT

ATTORNEY GENERAL 3RD RESPONDENT

AND

MATUNKE OLE LESIDAI INTERESTED PARTY

MARA NORTH CONSERVANCY INTERESTED PARTY

OLOISUKUT CONSERVANCY INTERESTED PARTY

NEPTUNE CAMP INTERESTED PARTY

AND

OIBOO OLE MANTUKE KISEET EXPARTE APPLICANT

SOIPEI VINCENT KISEET EXPARTE APPLICANT

DEMBA NELSON KISEET EXPARTE APPLICANT

RULING

1. The Judicial Review Application dated 23.11.2023 (hereinafter referred to as “the present JR”) was instituted by the 1st to 3rd Ex-parte Applicants upon obtaining leave on the 17.11.2023.



2. The Supporting Affidavit sworn on the 23.11.2023 in support of the prayers contained in the present JR were sworn by the 2nd Ex-parte Applicant on his own behalf and that of the 1st and 3rd Ex-parte Applicants.
3. However, before the determination of the present JR, the 2nd and 3rd Ex-parte Applicants filed two documents namely a Notice to Act in Person dated 12.03.2024 and NOTICE OF WITHDRAWAL dated 12.03.2024.
4. On the 13.03.2024, the 2nd and 3rd Ex-parte Applicants appeared before the Court virtually and sought to have an Order that the present JR be marked as withdrawn as they no longer wanted to litigate on the same.
5. The Counsel on Record for the 1st to 3rd Ex-parte Applicants informed the Court that the two documents namely Notice to Act in Person and NOTICE TO WITHDRAW both dated 12.03.2024 and filed by the 2nd and 3rd Ex-parte Applicants had not been served on the firm.
6. Secondly, the Counsel on record for the 1st to 3rd Ex-parte Applicants informed the Court that even if the 2nd and 3rd Ex-parte Applicants would be allowed to withdraw from the present JR, the 1st Ex-parte Applicant was still interested to proceed with the litigation to its logical conclusion.
7. Due to the non-service of the Notice to Act in Person and THE NOTICE OF WITHDRAWAL both dated 12.03.2024 and filed by the 2nd and 3rd Ex-parte Applicants, the Court directed them to be served on the Counsel for the 1st to 3rd Ex-parte Applicants and the matter be mentioned on the 19.03.2024 for further directions.
8. On the 19.03.2024, the matter was placed before the Court for directions on whether the Notice to Act in Person and THE NOTICE OF WITHDRAWAL dated 12.03.2024 and filed by the 2nd and 3rd Ex-parte Applicants should be endorsed as drawn and thereafter further directions issued.
9. However, the 1st to 3rd Ex-parte Applicants Counsel submitted that the Notice to Act in Person dated 12.03.2024 by the 2nd and 3rd Ex-parte Applicants should not be endorsed by the Court because in Judicial Review proceedings, an Ex-parte Applicant requires leave of the Court to act in person.
10. The 1st and 2nd Respondents Counsel did not expressly dispute this argument but sought for the Court's directions as to whether or not the 2nd and 3rd Ex-parte Applicants Notice to Act in Person was procedural and properly filed.
11. The Counsel for the 1st and 3rd Interested Parties were of the view that the Notice to Act in Person filed by the 2nd and 3rd Ex-parte Applicants was procedural and properly filed as they had a right to be either presented by a Counsel and or act in person.
12. The 1st and 3rd Interested Parties submitted that the 1st to 3rd Ex-parte Applicants Counsel cannot force a litigant to be represented in a Court of Law.
13. In essence therefore, the Counsel for the 1st and 3rd Interested Parties argued the Court to endorse the Notice to Act in Person dated 12.03.2024 as well as the Notice of Withdrawal dated 12.03.2024 filed thereafter.
14. The issue for determination therefore is whether the Notice to Act in Person and the Notice of Withdrawal both dated 12.03.2024 can be endorsed and/or recorded as part of the proceedings in the present JR.



15. The first document for discussion is the Notice to Act in Person filed by the 2nd and 3rd Ex-parte Applicants.
16. There is no doubt that the 1st to 3rd Ex-parte Applicants engaged a firm of Advocates to represent them in the present JR.
17. However, the 2nd and 3rd Ex-parte Applicants thereafter elected to act in person and proceeded to file the necessary document known as Notice to Act in Person to implement this decision.
18. The provisions of Order 9 Rule 1 of the [Civil Procedure Rules](#), 2010 allow parties in a legal proceeding and/or suit to be represented by a recognised agent and/or advocate.
19. Further down, Order 9 Rule 8 of the [Civil Procedure Rules](#), 2010 also allows a party to a legal proceeding and/or suit to act in person.
20. In other words, therefore, where a party to a legal proceeding and/or suit had instructed a recognised agent and/or advocate to act on his behalf in terms of Order 9 Rule 1 of the [Civil Procedure Rules](#), 2010, then such a party can elect to terminate the services of the said recognized agent and/or advocates through the provisions of Order 9 Rule 8 of the [Civil Procedure Rules](#), 2010.
21. The only mandatory requirement in Order 9 Rule 8 of the [Civil Procedure Rules](#), 2010 is the filing of a Notice to Act in Person.
22. However, a Notice to Act in Person under Order 9 Rule 8 of the [Civil Procedure Rules](#), 2010 can only be filed when there is no judgement and/or decree in the proceedings and/or suit.
23. In the event a judgement and/or decree has been pronounced by the Court, then one will be required to file an Application under Order 9 Rule 9 of the [Civil Procedure Rules](#), 2010 to seek leave to either change the recognised agent and/or advocates before such changes are endorsed by the Court.
24. The 1st to 3rd Ex-parte Applicants Counsel submitted that in Judicial Review proceedings, no party can file a Notice to Act in Person without an Application being made in Court and leave granted.
25. However, the Counsel for the 1st to 3rd Ex-parte Applicants did not cite any statutory provision and/or authority that either directly and/or indirectly makes such a provision.
26. Unfortunately, this Court is not aware of any Statutory provisions and/or any judicial determination that a litigant in Judicial Review proceedings seeking to change his advocates and/or act in person must obtain leave of the Court before filing a Notice of change of Advocates and/or Notice to Act in Person as prescribed under Order 9 Rule 8 of the [Civil Procedure Rules](#), 2010.
27. In essence therefore, this Court hereby makes a finding that the Notice to Act in Person dated 12.03.2024 filed by the 2nd and 3rd Ex-parte Applicants is lawful and proper in law.
28. Turning to the Notice of Withdrawal dated 12.03.2024 filed by the 2nd and 3rd Ex-parte Applicants, this Honourable Court is of the considered view that it was filed correctly and therefore lawful.
29. The effect of the Notice of Withdrawal dated 12.03.2024 filed by the 2nd and 3rd Ex-parte Applicants is that it will terminate their causes of action and remedies against the 1st and 2nd Respondents herein.
30. Nevertheless, the 1st Ex-parte Applicant's cause of action against the 1st and 2nd Respondents will survive and can proceed for hearing and determination.



31. This is because although each of the Ex-parte Applicant had an individual cause of action and/or remedy that he was seeking against the 1st and 2nd Respondents, the 2nd Ex-parte Applicant was the one that swore the pleadings on delegated powers of the 1st and 3rd Ex-parte Applicants.
32. It goes without saying that if the 2nd and 3rd Ex-parte Applicants elect to terminate and/or withdraw their causes of actions and/or reliefs against the 1st and 2nd Respondents, the 1st Ex-parte Applicant's cause of action and/or reliefs should proceed for full hearing and determination thereof.
33. In conclusion therefore, this Court hereby issues the following directions on the issue of the Notice To Act In Person and the Notice of Withdrawal both dated 12.03.2024 filed by the 2nd and 3rd Respondents;
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 - A. The Notice to Act In Person dated 12.03.2024 filed by the 2nd and 3rd Ex-parte Applicants is properly filed and duly endorsed by this Court.
 - B. The Notice of Withdrawal dated 12.03.2024 filed by the 2nd and 3rd Ex-parte Applicants is similarly lawful and duly endorsed by this Court.
 - C. Pursuant to the Notice of Withdrawal dated 12.03.2024 filed by the 2nd and 3rd Ex-parte Applicants, the 1st Ex-parte Applicant is hereby granted leave of 14 days from the date of this Ruling to amend the Notice of Motion Application dated 23.11.2023 by deleting the names of the 2nd and 3rd Ex-parte Applicants as parties to the said application.
 - D. The 1st Ex-parte Applicant is further granted leave of 14 days to prepare, file and serve a fresh Supporting Affidavit in support of the Notice of Motion Application dated 23.11.2023 and/or any other relevant document that might be useful in the hearing and determination of the proceedings.

DATED, SIGNED & DELIVERED VIRTUALLY IN KILGORIS ELC COURT ON 21ST OF MAY 2024.

EMMANUEL.M.WASHE

JUDGE

In the Presence of:

Court Assistant: Mr. Ngeno

Advocate for Ex-parte Applicant: Mr. Nyambati (N/A)

Advocate for 1st & 2nd Respondent: Mr. Wabwile

Advocate for 1st Interested Party: Mr. Ochwangi

Advocate for 2nd Interested Party: Mr. Kubwa (N/A)

Advocate for 3rd Interested Party: Mr. Shira

