



**Achieng & 5 others v Attorney General (Environment & Land Case 2028 of 2007) [2024] KEELC 5575 (KLR) (25 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5575 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 2028 OF 2007**

**LN MBUGUA, J  
JULY 25, 2024**

**BETWEEN**

**BENTA KALARIA ACHIENG ..... 1<sup>ST</sup> PLAINTIFF  
EVERLYNE ATIENO OCHIENG ..... 2<sup>ND</sup> PLAINTIFF  
CECILIA WANJIRU GICHURU ..... 3<sup>RD</sup> PLAINTIFF  
MARY NDUNGE MUTUKU ..... 4<sup>TH</sup> PLAINTIFF  
WILSON MUTUMBA WOMEN GROUP (DULY REGISTERED AS A SELF-HELP  
GROUP WITH MEMBERSHIP OF 2,907 WOMEN) ..... 5<sup>TH</sup> PLAINTIFF  
ISAAC MBURU NJUGUNA (SUING ON HIS BEHALF AND ON BEHALF OF  
700 MEMBERS OF WILSON MUTUMBA WOMEN GROUP) ..... 6<sup>TH</sup> PLAINTIFF**

**AND**

**THE ATTORNEY GENERAL ..... DEFENDANT**

**RULING**

1. This suit came up for hearing on 16.5.2024 when counsel for the 6<sup>th</sup> plaintiff addressed the court as follows; “I have instructions to have the suit of the 6<sup>th</sup> plaintiff withdrawn and there is a notice to that effect dated 15.5.2024”.
2. In opposition to the said withdrawal, Counsel for the 1<sup>st</sup> Plaintiff submitted that it would be proper for the Plaintiff to provide a list and consent of the people he was withdrawing suit on behalf of as well as avail a list of particulars of other officials of the group. He pointed out that the membership of the entity known as Wilson Mitumba Women Group is in issue and the 6<sup>th</sup> Plaintiff is not a bonafide official of the said group.



3. Counsel for the 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Plaintiffs also opposed the withdrawal and adopted the submissions of counsel for the 1<sup>st</sup> Plaintiff.
4. Counsel for the 4<sup>th</sup> Plaintiff contended that in this court's ruling of 9.3.2023, the 6<sup>th</sup> Plaintiff ceased to be a party to these proceedings since the amended plaint that sought to enjoin him was expunged.
5. He also argued that Order 1 Rule 14 of the Civil Procedure Rules is clear that in case of a representative suit being enjoined /withdrawing from a suit has to be by consent signed and filed in court. He averred that the Notice of withdrawal ought to be ignored as the 6<sup>th</sup> Plaintiff is an imposter with no *locus* in the matter.
6. On his part, counsel for the Defendant submits that the Plaintiffs are joined at the hip such that the whole suit must go if the 6<sup>th</sup> Plaintiff's case goes. He supports the argument by counsel for the 4<sup>th</sup> Plaintiff that the notice has no consequence due to this court's orders of 9.3.2023.
7. In rejoinder, counsel for the 6<sup>th</sup> Plaintiff urged the court to make a finding that the 6<sup>th</sup> Plaintiff was not even a party in the 1<sup>st</sup> place and that in any case, under Order 25 (2) (2) of the Civil Procedure Rules, no consent to withdraw is required.
8. The issue for determination is whether the 6<sup>th</sup> Plaintiff's Notice of Withdrawal of suit dated 15.5.2024 is consequential in this matter. This court stated as follows at paragraph 8 of its ruling of 9.3.2023;  

“On the issue of the amended plaint dated 10.3.2020 of the 6<sup>th</sup> Plaintiff, the court records of 5.2.2020 indicate that parties consented to the joinder of the 6<sup>th</sup> Plaintiff of which the plaint was to be amended within 14 days. This order was similarly not complied with by this particular party; (6<sup>th</sup> Plaintiff). In the circumstances, the said amended plaint is hereby expunged from the records.”
9. As correctly submitted by counsel for the 4<sup>th</sup> Plaintiff, the 6<sup>th</sup> Plaintiff is not a party to this suit as a consequence of the aforementioned ruling. It appears that he crawled back to the proceedings and sought to stall them by purporting to file a notice of withdrawal of suit when the matter was scheduled for hearing. In that regard, the purported notice of withdrawal of the suit dated 15.5.2024 is of no consequence as the 6<sup>th</sup> plaintiff has no *locus* in this matter.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 25<sup>TH</sup> DAY OF JULY, 2024 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

In the presence of:-

Maosa for 4<sup>th</sup> Plaintiff

M/s Magoti for 1<sup>st</sup> Plaintiff

M/s Mwangi for 2<sup>nd</sup> and 5<sup>th</sup> Defendant

Court assistant: Eddel

