



**Kahuthu and Kahuthu Advocates v Karuga & another; Dekings Traders Limited (Objector)
(Miscellaneous Application 133 of 2019) [2023] KEELC 16739 (KLR) (27 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 16739 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
MISCELLANEOUS APPLICATION 133 OF 2019
MD MWANGI, J
MARCH 27, 2023**

BETWEEN

KAHUTHU AND KAHUTHU ADVOCATES DECREE HOLDER

AND

ROSE WAMBUI KARUGA 1ST JUDGMENT DEBTOR

KENNETH GICHINGA KARUGA 2ND JUDGMENT DEBTOR

AND

DEKINGS TRADERS LIMITED OBJECTOR

*(In respect of the Application dated 1st March, 2023 by the Advocate for
the Respondents and the Objector seeking leave to withdraw from acting)*

RULING

Background

1. The application before the Court is the Notice of Motion dated March 1, 2023 filed by the Law Firm of A K Wahome & Company Advocates seeking leave to cease from acting for the Respondents and the Objector in this matter. The application is premised on the grounds that though the Advocate has been acting for the Respondents since inception of this suit there has been a change of personal circumstances making it impossible for the applicant to continue representing the Respondents any further.
2. The application however, is opposed by the G J Kahuthu Advocate for the Decree-Holder by way of a replying affidavit deponed on March 16, 2023. The deponent states that the application is fatally defective since the Supporting Affidavit of Albert Wahome Advocate is indicated to have been sworn on November 2, 2023 while the Application is dated March 1, 2023. He further termed the application as a delaying tactic meant to delay the determination of the objection proceedings herein and delay the



execution of the decree in his favour. The Advocate points out that the application is not only fatally defective but it is also frivolous, vexatious and an abuse of the court process.

3. The Advocate Applicant in response explained that the date indicated in the supporting affidavit was an inadvertent and excusable error.
4. The application was slated for hearing on March 21, 2023 at the first instance. The court however ruled that service was not proper in accordance with the provisions of Order 5 of the Civil Procedure Rules and ordered that it be served again on the Respondents and the Objector. The application was then stood-over to March 27, 2023.
5. The Advocate/Applicant complied and filed an Affidavit of Service deponed on the 21st March, 2023 confirming service upon his clients. The Court being satisfied with the service proceeded to hear the application by way of oral submissions.

Determination

6. The applicable law where an advocate wishes to cease from acting for a party in any proceedings is Order 9 Rule 13, which provides as follows:
 - 1 Where an advocate who has acted for a party in a cause or matter has ceased so to act and the party has not given notice of change in accordance with this Order, the advocate may on notice to be served on the party personally or by prepaid post letter addressed to his last- known place of address, unless the court otherwise directs, apply to the court by summons in chambers for an order to the effect that the advocate has ceased to be the advocate acting for the party in the cause or matter, and the court may make an order accordingly:

Provided that, unless and until the advocate has—

 - a served on every party to the cause or matter (not being a party in default as to entry of appearance) or served on such parties as the court may direct a copy of the said order; and
 - b procured the order to be entered in the appropriate court; and
 - c left at the said court a certificate signed by him that the order has been duly served as aforesaid, he shall (subject to this Order) be considered the advocate of the party to the final conclusion of the cause or matter including any review or appeal.
 - 2 From and after the time when the order has been entered in the appropriate court, any document may be served on the party to whom the order relates by being filed in the appropriate court, unless and until that party either appoints another advocate or else gives such an address for service as is required of a party acting in person, and also complies with this Order relating to notice of appointment of an advocate or notice of intention to act in person.
 - 3 Any order made under this rule shall not affect the rights of the advocate and the party as between themselves.
7. As Nyamweya J (as she then was) observed in the case of *Eunice Wairimu Muturi & another v Ruth Nyambura Chuchu & 2 others* [2013] eKLR, the only requirement for an Advocate wishing to withdraw from acting in accordance with the provisions of the *Civil Procedure Rules* is to give notice to all affected parties. Once the court is satisfied that this requirement has been met, then leave should be granted.



8. In this matter, I find that the requirements of Order 9 Rule 13 of the *Civil Procedure Rules* have been met. I therefore allow the application by the Advocate for the Respondents and the Objector to withdraw from acting for the said parties.

9. The costs of the application shall be in the cause.

It is so ordered

Dated, Signed and Delivered at Nairobi this 27th day of March 2023.

M D MWANGI

JUDGE

In the virtual presence of:

Mr Kahuthu for the Decree- holder.

No appearance for objector & Judgment debtors.

Court Assistant – Yvette.

M D MWANGI

JUDGE

