



REPUBLIC OF KENYA



KENYA LAW
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**Blast Contractors & General Suppliers Ltd v County Government of Meru
(Civil Suit 15 of 2020) [2023] KEHC 1478 (KLR) (23 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 1478 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL SUIT 15 OF 2020
TW CHERERE, J
FEBRUARY 23, 2023**

BETWEEN

BLAST CONTRACTORS & GENERAL SUPPLIERS LTD PLAINTIFF

AND

COUNTY GOVERNMENT OF MERU DEFENDANT

RULING

1. By notice of motion application dated October 28, 2022, applicant has moved the court seeking orders that:
 1. The Notice of Appointment of Advocates dated February 8, 2022 and any other documents filed by E Kinyanjui & Company Advocates be struck out.
 2. In the alternative, there be a declaration of which firm of advocates is properly on record for the plaintiff.
 3. In the alternative to 1 and 2 above, there be a stay of this suit pending the determination of the issue of representation of the plaintiff.
 4. Costs of this application be provided for.
2. The application is premised on the following grounds that Plaintiff through the firm of Magee LLP instituted the present suit vide a plaint dated August 11, 2020. Subsequently, the firm of E Kinyanjui & Company Advocates filed a notice dated February 8, 2022 indicating that the said firm had been appointed to act alongside the firm of Magee Law LLP.
3. In response to the application, the firm of E Kinyanjui & Company Advocates in urged the court to find that the application offends the provisions of order 51 of the *Civil Procedure Rules, 2010* as it is not founded on any provision of the law, it is frivolous, vexatious and an abuse of the processes of the



law, offend the overriding objective of the court as it is clearly aimed at delaying the hearing of the suit and applicant cannot dictate how the applicant intends to prosecute its case.

Analysis and determination

4. Parties argued the application orally in court. I have considered the application in the light of the affidavit and grounds of opposition, oral submission by counsel and authorities cited on behalf of the plaintiff.
5. As to appearances in court by parties, their recognized agents and advocates, order 9 rule 1 of the [*Civil Procedure Rules*](#) provides as follows:

“(1) Any application to or appearance or act in any court required or authorized by the law to be made or done by a party in such court may, except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person or by his recognized agent, or by an advocate duly appointed to act on his behalf.....”

6. In the case of [*Belgo Holdings Limited vs Wilson Birir*](#) [2010]eKLR, Njagi J (as he then was) that It is clear stated that it is possible for a party to be represented in court by more than one advocate. This view derives its force and effect from Rule 7 (1) of The Advocates (Practice) Rules which states as follows –

“An Advocate may act for a client in a matter in which he knows or has reason to believe that another advocate is then acting for that client only with the consent of that other Advocate” (emphasis added).

7. In the absence of such consent the second advocate would have no locus to act for such a client.
8. In this present application, applicant has raised a concern that two advocates cannot represent the plaintiff at the same time. The firm of Magee LLP has not opposed this application which to me is a clear indication that they have no problem with the firm of E Kinyanjui & Company Advocates coming on record alongside them.
9. Whereas I agree with the applicant that it becomes difficult to deal with more than one firm of advocates representing the same party especially on the issue of service of court pleadings, the removal of an advocate from representing a client is not to be taken lightly as the litigant who appointed such advocate enjoys the constitutional right to be represented by an advocate of his choice and the right to a fair hearing.
10. In [*Jopa Vilas LLC v Overseas Private Investment Corp & 2 Others*](#) [2014] eKLR the Court of Appeal emphasized the right to representation by an advocate of the party’s choice and quoted a passage from the judgment in [*Delphis Bank Ltd v Channan Singh Chattbe & 6 others*](#) [2005] eKLR that:

“The Supreme Court of Samoa in [*Apia Quality Meats Limited v Westfield Holdings Limited*](#) [2007] 3 LRC 172 held on the subject of removal of an advocate from proceedings that such an application had to be considered under the relevant legal principles on the courts exercise of inherent jurisdiction to control the conduct of the proceedings and those who appeared before it as counsel. The factors to be considered were such factors as conflict of interest, actual or potential breach of the duty to protect confidential information, or misconduct. It was further held that removal of an Advocate from acting for a party in proceedings was an extraordinary and drastic remedy to be contemplated only in the most



extraordinary circumstances, requiring misconduct so serious that removal was the only way of safeguarding the future integrity of the proceedings.”

11. O’Kubasu J A (as he then was) observed in *William Audi Odode & Another v John Yier & Another* Court of Appeal Civil Application no NAI 360 of 2004 that:

“...[I]t is not the business of the courts to tell litigants which advocate should or should not act in a particular matter. Indeed, each party to a litigation has the right to choose his or her own advocate and unless it is shown to a court of law that the interests of justice would not be served if a particular advocate were allowed to act in a matter, the parties must be allowed to choose their own counsel.”

12. For the foregoing reasons, I decline to strike out the firm of E Kinyanjui & Company Advocates in representing the plaintiff as requested by the applicant but in the interest of good, it is hereby ordered that the two firms of advocates representing the plaintiff do consult with their client to determine which of them should be the leading counsel on record, to whom reference concerning this case should be made which consent should be filed in court and served on defendant’s advocate not later than 14 days from today’s date.

13. This matter is fixed for hearing on 05th July, 2023.

DATED AT MERU THIS 23rd DAY OF February 2023

T W CHERERE

JUDGE

Appearances

Court assistant - Morris Kinoti

For plaintiff - Mr Michuki for E Kinyanjui & Co Advocates

For defendant - Ms Opiyo for Kibanga & Co Advocates

