



Kitoto (Sued as the Secretary General and a Registered Trustee of Kenya Assemblies of God Church) & another v Wanyoike & another (Environment and Land Appeal E019 of 2022) [2023] KEELC 16940 (KLR) (20 April 2023) (Ruling)

Neutral citation: [2023] KEELC 16940 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND APPEAL E019 OF 2022**

LN MBUGUA, J

APRIL 20, 2023

BETWEEN

PHILIP KITOTO (SUED AS THE SECRETARY GENERAL AND A REGISTERED TRUSTEE OF KENYA ASSEMBLIES OF GOD CHURCH) 1ST APPELLANT

JOHN KARANJA WANJENGU (SUED AS THE OFFICE BEARER OF KENYA ASSEMBLIES OF GOD KARIOBANGI RIVER BANK CHURCH) 2ND APPELLANT

AND

SIMON KURIA WANYOIKE 1ST RESPONDENT

NAIROBI CITY COUNTY 2ND RESPONDENT

RULING

1. This appeal was filed challenging the decision of the trial court in Milimani CMCC No 5493 of 2018 in relation to ownership of plot No 150 in Kariobangi. On October 25, 2022, the counsels for the appellant and 1st Respondent informed the court that they had settled all their issues, while counsel for the 2nd Respondent indicated that they were not agreeable to the settlement.
2. To this end, the parties had availed a consent dated October 19, 2022 which was not signed by the 2nd defendants advocate.
3. Since then, the matter has dragged on due to the none acceptable terms of the consent on the part of the 2nd Respondent's advocate.
4. On March 8, 2023, counsel for the 2nd Respondent indicated that they were served with the consent only the previous day and that they were not satisfied with it.



5. In response, counsel for the appellant stated that counsel Swanya (for 2nd Respondent) had not filed any notice to act for 2nd Respondent and no such document was in the courts system, hence they were not properly on record.
6. In rejoinder, counsel Swanya stated that they had filed a memorandum of appearance but could not tell its date. They have also filed a Replying Affidavit dated June 17, 2022. their only issue was on costs.
7. The issue for determination is whether Swanya & Co advocates are properly on record and whether they should be paid costs.
8. I have perused the entire digital court record (CTS) and the only document filed by the 2nd Respondent is a Replying Affidavit dated June 17, 2022. There is no notice of appointment to act for the 2nd Respondent nor a memorandum of appearance thereof. In the circumstances and in so far as this appeal is concerned, the 2nd defendant's advocates are not properly on record. Thus their quest for costs is unwarranted. I decline to grant any costs to the said party.
9. In line with the proceedings of October 25, 2022, the consent dated October 19, 2022 is hereby adopted as a judgment of the court in terms of the contents set out there in.
10. The appeal is marked as settled.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 20TH DAY OF APRIL, 2023 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

M/s Kiaguthi for the Applicant

Court assistant: Joan

