



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CIVIL CASE NO.279 OF 2003**

**LAWRENCE NDUTU & OTHERS.....PLAINTIFFS**

**VERSUS**

**KENYA BREWERIES LIMITED.....DEFENDANT**

**RULING**

1) This ruling is the outcome of two applications taken out by some of the plaintiffs through the firm of Otwal & Manwa Associates hereinafter referred to as the proposed incoming firm of advocates. The first motion is dated 21<sup>st</sup> August 2019 whereof the applicants sought for the following orders.

***i. This application be certified urgent and be heard on priority basis during the High Court vacation.***

***ii. Leave be and hereby granted for the firm of Otwal & Manwa Associate Advocates to come on record for the plaintiffs/applicants.***

***iii. The court be pleased to review its judgment dated signed and delivered on 28<sup>th</sup> January 2018 and an offshoot ruling dated 26<sup>th</sup> February 2019 by Justice J. K. Serگون, whereby it was decreed and ordered inter alia that the defendant pays each of the plaintiffs damages for loss of employment a sum equivalent to one (1) month's salary as at the time of termination of employment.***

***iv. Costs of this application be provided for.***

2) The applicants filed the affidavit sworn by James Sibili in support of the motion. The firm of Namada & Co. Advocates hereinafter referred to as the outgoing firm of advocates filed grounds of opposition and the replying affidavit of Namada Simoni to resist the motion.

3) The second motion is dated 12<sup>th</sup> March 2021 in which the main order sought is for this suit to be transferred to the Employment and Labour Relations Court. The motion is supported by affidavit sworn by James Sibili. None of the parties filed a response to the second application.

4) The defendant did not file a response to both applications. When the applications came up for hearing, this court directed the parties to file and exchange written submissions.

5) At the time of writing this ruling, the plaintiffs were the only parties who had filed their written submissions.

6) I have considered the grounds stated on the two applications plus the facts deponed in the rival affidavits. I have also considered the grounds of opposition filed by the firm of Namada & Co. Advocates. I think it is important to first determine the application for leave by the firm of Otwal and Manwa Associates to come on record in place of the firm of Namada & Co. Advocates to appear for the plaintiffs after judgment.

7) It is the submission of the applicants that having fallen out with the firm of Namada & Co. Advocates, the firm of Otwal & Manwa should be granted leave to come on record to represent them under Order 9 rule 9 of the Civil Procedure Rules.

8) It is stated by the firm of Otwal and Manwa Associates that it wrote to the firm of Namada & Co. Advocates seeking for consent to come on record in its place to represent the plaintiffs but the outgoing law firm refused to grant the consent arguing that the clients(plaintiffs) must first settle its legal fees.

9) In response to the submission of the incoming firm, the outgoing firm argued that some of the plaintiffs had disowned withdrawing instructions from it therefore there is doubt whether the incoming firm obtained instructions from genuine plaintiffs. The outgoing firm stated that it is ready to give consent to the proposed incoming firm so long as the plaintiffs settle its fees.

10) It is not in dispute that the law firm of Namada & Co. Advocates has declined to grant consent to the firm of Otwal & Manwa Associates to come on record in its place to represent the plaintiffs after judgment. It is also apparent that the applicants have not made any proposals to settle the legal fees due to the outgoing firm of advocates.

11) The provisions of Order 9 rule 9 of the Civil Procedure rules provides that:

**“Where there is a change of advocate, or when a party decides to act in person having previously engaged an advocate after judgment has been passed, such change or intention to act in person shall not be effected without an order of the court-**

**a) Upon an application with notice to all the parties or**

**b) Upon a consent filed between the outgoing advocate and the proposed incoming advocate or party intending to act in person as the case may be.”**

12) In my view, the mischief intended to be cured by the above quoted provisions is to protect the outgoing advocate from missing out on payment of his legal fees.

13) This case involves numerous plaintiffs who were represented by the firm of Namada & Co. Advocates from the beginning upto the stage of judgement. None of the plaintiffs has undertaken to settle the outgoing advocate’s legal fees.

14) Since the interest of the outgoing law firm has not been secured I decline to grant leave to the proposed incoming law firm to come on record in place of the outgoing law firm to appear for the plaintiffs.

15) The consequence of this court’s order refusing to grant leave means that the two applications are improperly on record having been filed by a law firm which came on record without prior leave of court, therefore those applications cannot be considered on their merits. The motion dated 21.8.2019 and the other dated 12<sup>th</sup> March 2021 are hereby ordered struck out with each party bearing its own costs.

**DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 30TH DAY OF JUNE, 2021.**

.....

**J. K. SERGON**

**JUDGE**

In the presence of:

..... for the Plaintiff

..... for the Defendant