

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

MISC. APPLICATION NO. 197 OF 2018

MARTIN TINDI & CO. ADVOCATES.....APPLICANT

VERSUS

BIMBITA MGALLA DZUMBA & 46 OTHERS.....RESPONDENTS

RULING

1. To this court Order 9 Rule 9 was intended to shield advocates from clients keen avoid payment of legal fees to their advocates after enjoyed legal services by such advocates by changing advocates or seeking to act in person but not as a tool to be used by an opponent in litigation to dictate to the adversary the choice of this advocates. See *Doshi iron mongers -vs- KRA & Another [2019] eKLR*. I take the view that it cannot be a tool to defeat an application at the instance of an opponent.

2. Today, if I accede to Mr Tindi's request and struck out the motion on account of future to comply with order 9 Rule 9, I would have done nothing to resolve the dispute because the applicant will hereby came back tomorrow with an appropriate prayer as an addition to those currently in the application. That would run affront the dictate that the litigation be conducted in proportionate and cost effective manner. For that reason I decline to strike out on the basis of non-compliance with Order Rule 9 Civil Procedure Rule.

4. On the second attack that the motion was amended without leave, I do take it that the prejudice that confronts the respondent in that it has not had the time to respond to the amended motion it having been filed subsequent to the responses by the Respondent. That is indeed a valid concern and invoking the right to a fair trial. It is, however, not a basis to invite the draconian remedy to strike out. The same is capable of remedy by granting leave to the respondent to file any additional responses to the amended motion.

6. I thus decline to strike out the motion but grant leave to Mr. Tindi to file any additional response to the motion within 7 days from today.

7. The motion shall be canvassed by way of written submissions to be filled as follows: -

i. By the Applicant within 7 days after Mr. Tindi shall have filed

and served any Response to the amended motion.

ii. By the Respondent within 7 days after service by the applicant.

iii. Hearing on 29/9/2020.

Dated, signed and delivered at Mombasa this 31st day of August 2020.

P.J.O. OTIENO

JUDGE