



Kivure (Suing on their behalf and on behalf of 4201 members of Kishamba B Group Ranch) & 8 others v Mwakina & 2 others (Sued as defunct chairman, Secretary and treasurer respectively of the Executive Committee of Kishamba B Group Ranch) & 27 others; County Government of Taita Taveta & 14 others (Interested Parties) (Civil Suit 74 of 2019 & Environment and Land Case Civil Suit 116 of 2015 (Consolidated)) [2023] KEELC 21612 (KLR) (31 October 2023) (Ruling)

Neutral citation: [2023] KEELC 21612 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
CIVIL SUIT 74 OF 2019 & ENVIRONMENT AND LAND
CASE CIVIL SUIT 116 OF 2015 (CONSOLIDATED)**

LL NAIKUNI, J

OCTOBER 31, 2023

BETWEEN

JOHN KIVURE (SUING ON THEIR BEHALF AND ON BEHALF OF 4201 MEMBERS OF KISHAMBA B GROUP RANCH) & 7 OTHERS PLAINTIFF

AND

**BENSON MLAMBO MWAKINA, ANTONY KISHAGHA MWASI & FLORENCE MALANDI (SUED AS DEFUNCT CHAIRMAN, SECRETARY AND TREASURER RESPECTIVELY OF THE EXECUTIVE COMMITTEE OF KISHAMBA B GROUP RANCH) 1ST DEFENDANT
CABINET SECRETARY, MINISTRY OF LANDS 2ND DEFENDANT
DIRECTOR OF LAND ADJUDICATION/SETTLEMENT 3RD DEFENDANT
COUNTY LAND REGISTRAR- TAITA TAVETA COUNTY 4TH DEFENDANT
ATTORNEY GENERAL 5TH DEFENDANT**

AND

**COUNTY GOVERNMENT OF TAITA TAVETA INTERESTED PARTY
DUSTUNI KIMBIO & 13 OTHERS INTERESTED PARTY**

**AS CONSOLIDATED WITH
ENVIRONMENT AND LAND CASE CIVIL SUIT 116 OF 2015**

BETWEEN



KISHAMBA B GROUP RANCH PLAINTIFF

AND

AMINA MADEMU & 22 OTHERS DEFENDANT

RULING

I. Introduction

1. As matter of basic information, on 6th June 2023, the court directed that ELC No. 116 of 2015 be consolidated with ELC No. 74 of 2019, with the latter being the lead file. It follows therefore, that the Ruling in this instant matter is with regard with the Notice of Motion application dated 6th June 2023 where the court was moved from the lead file. The application has been brought by the Counsel for the 1st Defendant under the provision of Order 9 Rule 1, Order 2 Rule 15 & Order 51 Rule 1 of the [Civil Procedure Rules](#) 2010 and Sections 1A, 2A & 3A of the [Civil Procedure Act](#), Cap. 21.

II. The 1st Defendant/Applicant's case

2. The 1st Defendant/Applicant sought for the following orders:
 - a. That the Notice of Change of Advocates by Messrs. Machora Motuka & Company Advocate dated 22nd of February, 2023 and filed in Court on 24th of February 2023 purporting to act for the 1st Defendant be struck out.
 - b. That the authorized representatives and/or advocates for the 1st Defendant remain to be Messrs. M.S Shariff & Company Advocates as per the Memorandum of Appearance dated 24th July 2019 and filed in Court on the 25th of July, 2019.
 - c. That the costs of this Application be borne by Messrs. Machora Motuka & Company Advocates.
3. The application is based on the grounds on the face of the application by the grounds, testimonial facts and averments of Benson Mlambo Mwakina. The Applicant deponed that:-
 - a. He was the Chairperson of Kishamba B Group Ranch, the 1st Defendant herein.
 - b. The Law firm of Messrs. Machoka Mutoka Advocates had filed a Notice of Change of Advocates on 24th February 2023, purporting to act for the 1st Defendant in place of Messrs. M.S Shariff & Company Advocates.
 - c. The Applicant maintained that the said Notice of Change of Advocates was utterly disputed by the 1st Defendant/Applicant herein.
 - d. Indeed the Chairperson of the 1st Defendant/Applicant wrote a letter addressed to the said law firm demanding that the firm desist and withdraw their notice of change of advocate as their action was not only unprofessional, but also unethical and highly irregular of a conduct of an advocate.
 - e. Despite of the demands, the said firm of Messrs. Machora Motuka & Company Advocates refused to withdraw representation, which had in turn caused unnecessary delay in prosecuting the matter. The court was urged to strike out the irregular and unlawful notice of change of advocates with costs.



- f. He deponed that on 24th of July, 2019, the Group Ranch appointed the Law firm of Messrs. M.S. Shariff & Company Advocate, who entered appearance and was the Advocate on record for the ranch.
- g. The said Law firm had been on record in the matter as well as the file consolidated herein Mombasa ELC No. 116 of 2015, and the ranch had no intention or interest in changing representation from the said firm of advocates.
- h. He deponed that sometime in March 2023, it was communicated to the ranch that they had allegedly appointed the Law firm of Messrs. Machora Motuka & Company Advocates in place of Messrs. M.S. Shariff & Company Advocates. The deponent then wrote to the said firm on 16th March 2023 refuting the alleged appointment of their firm and/or any change of representation at all and called out the fraudulent, unlawful, unprofessional and unethical conduct by the said firm of advocates and informed them to desist from such unlawful representation/ conduct. The letter was followed up with a police report at Voi Police Station OB No. 24/22/3/2023.
- i. The deponent urged the court to hold the said firm of advocates personally liable as to costs or any other liability arising out of their representation herein since the ranch has never engaged them in any capacity to represent them herein or in Mombasa ELC 116 of 2015.
- j. The court was further urged to not only take notice of the conduct of the advocate behind the said firm but to hold him personally liable as to costs or any civil or criminal liability arising out of his fraudulent and unlawful actions herein since he has no authority at all to act on behalf of the 1st defendants.
- k. The deponent prayed for the court to strike out the Notice of Change of Advocates by Messrs. Machora Motuka & Company Advocate dated 22nd February 2023 and filed in Court on 24th of February, 2024 purporting to act for the 1st Defendant in place of M.S Shariff & Company Advocates and affirm that the 1st Defendant's/ Applicant's advocates on record remain to be Messrs. M.S. Shariff & Company Advocates.

III. The Response by the Respondent

- 4. While opposing this application, the Respondent filed a Relying Affidavit sworn by one Anthony Kishagha Mwasi, the Secretary of Kishamba 'B' Group Ranch and one of those listed as the 1st Defendant herein. He deponed that:-
 - a. The ranch as an artificial legal person could institute and/or defend legal proceedings in Court, as provided for by the provision of Order 9 Rule 1 of the Civil Procedure Rules 2010.
 - b. According to the Respondent, this provision of the Law which clearly stipulates that a litigant could appear and/or act in person, through a representative and/or through an advocate duly appointed to act on his behalf.
 - c. Further, he deponed that the provision of Order 9 Rule 2 of the Civil Procedure Rules 2010 defined a recognized agent in respect of an artificial person to be a person and/or officer of the artificial person duly authorized and in the case of a corporation, the recognized agent ought to be authorized under the corporate seal.



- d. He stated that where a suit had been instituted and/or defended for and on behalf of an artificial legal person, there ought to be a resolution, and in the absence of clear and express authorization, the chairperson or secretary cannot institute or defend a suit.
- e. The deponent maintained that Mr. Benson Mlambo Mwakina ceased to be the chairman of Kishamba 'B' Group Ranch effective 14th July, 2021 when he was ousted in an Annual General meeting held by the bona fide members of Kishamba 'B' Group Ranch.
- f. Despite the said resolution which remained unchallenged in a court of law, Mr. Mwakina had continued to misrepresent himself as the Chairman.
- g. He contended that the firm of Messrs. Shariff & Company Advocates had never been appointed to represent and/or safeguard the interests of Kishamba 'B' Group Ranch nor authorized to institute or defend any proceedings in Court. Instead, the said Law firm had been acting as the personal advocate of Mr. Mwakina, and could not represent itself as acting for and/or on behalf of Kishamba 'B' Group Ranch.
- h. The deponent maintained that the onus of proving that the ranch's duly recognized and appointed advocate Mr. Brian Motuka was not properly on record was to be borne by the Law firm of M/s. Shariff & Company Advocate and Mr. Mwakina.
- i. He deponed that the Applicants had failed to produce any letter authorizing the Law firm of Messrs. Shariff to act on behalf of the ranch and that the Memorandum of Appearance could in no way be conclusive evidence of having obtained instructions to act. There must be evidence of express instructions instructing the advocates in the form of a resolution by Kishamba 'B' Group Ranch be it by the committee or by the members themselves, and there had been no production of such a resolution by the law firm of Messrs. Shariff & Company Advocates.
- j. The deponent maintained that the members of Kishamba 'B' Group Ranch and the new steering committee unanimously appointed Mr. Brian Motuka from the firm of Messrs. Machora Motuka & Company Advocates as the new advocates on record to enter appearance and defend the matter on behalf of the 1st Defendant.
- k. The Court was urged to find that the firm of Messrs. Machora Motuka & Company Advocates was properly on record as per the Notice of Change of Advocates dated 22nd February, 2023 and filed in Court on 24th February, 2023.

IV. Analysis and determination

5. I have keenly assessed the filed pleadings and the submissions adduced herein by all parties. There are five (5) main issues for the determination by the Honorable Court. These are:-
 - a. What is the fundamental concept pertaining to professional legal representation of either an Advocate of High Court or to act in person.
 - b. Whether the Notice of Change of Advocates by Messrs. Machora Motuka & Company Advocate dated 22nd of February, 2023 and filed in Court on 24th of February 2023 indicating having been instructed to act for the 1st Defendant should be struck out.
 - c. Whether the authorized representatives and/or advocates for the 1st Defendant remain to be Messrs. M.S Shariff & Company Advocates as per the Memorandum of Appearance dated 24th July 2019 and filed in Court on the 25th of July, 2019.



- d. What are the directions granted by this Honourable Court in causing the matter to be expeditiously heard and determined in accordance with the pronouncement made by the Court of Appeal.
- e. Who should bear the costs of this application.

Issue No. a). What is the fundamental concept pertaining to professional legal representation of either an Advocate of High Court or to act in person.

6. Under this Sub – title and so to speak the entire application herein, the main sole issue for the deliberation is on the professional legal representation of clients by an Advocates of the High Court of Kenya or a client acting in person. The Laws and principles governing the provision of professional legal services are found variously. These include, the provision of Articles 25 (c), 47 and 50 (2) (g) and (h) of the [Constitution of Kenya](#), 2010 though with a bias on criminal proceedings. Principally, it will be noted that the legal entitlement and facilities are accorded to litigants in order for them to attain their fundamental rights to a fair hearing while before a Court of law. They provide as such:-

Every person has a right to fair trial which includes:-

- (g) to right to choose and be represented by, an Advocate, and, to be informed of this rights promptly;
 - (h). to have an Advocate assigned to the accused person by the State and at State expenses, if substantial injustice would otherwise result, and to be informed of this right promptly
7. As indicated, while the above provisions of the law would be more applicable in both Criminal and Civil proceedings, but critically seem to have a more inclination towards accused persons in criminal proceedings. Be that as it may, the provision of Order 9 of the [Civil Procedure Rules](#), 2010 which is entitled “Recognised Agents and Advocates”

Order 9 Rule 1 and 5 of the [Civil Procedure Rules](#), 2010 provide as follows:-

- 9 (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.
- 9(5) A party suing or defending by an Advocate shall be at liberty to change his Advocate in any cause or matter, without an order for the purpose, but unless and until notice of any change of Advocate is filed in the Court in which such cause or matter is proceeding and served in accordance with Rule 6, the former Advocate shall subject to rules 12 and 13 be considered the Advocate of the party until the final conclusion of the cause or matter, including any review or appeal.
- 9 (9). When 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.



8. Essentially, these legal principles of law provide an enabling environment where a party may be represented by an Advocate of his or her choice in a civil proceeding. There are several categories upon which legal representation in a Court of law is recognized. These are:-
- a. Appointment of a new Advocate to act in a fresh matter or in the first instance.
 - b. Appointment of an Advocate after Judgement has been delivered. There are two scenarios here:-
 - i. when there was an Advocate coming on record in a matter to replace an outgoing advocate after Judgement had been delivered; and
 - ii. where there was previously an Advocate and a party now wished to act in person. On these two occasions, there must have been an advocate on record immediately after Judgement had been rendered.
 - c. Effecting a change of Advocate from one Advocate to another;
 - d. A person previously represented by an Advocate but now wishing to act in person.
 - e. An Advocate wishing to cease acting Better still, a litigant may act in person.

It is instructive to note that in all these cases, either a formal notice or Consent or leave of Court is required to be filed in Court. The process of representation through engaging with an Advocate, is not a mere formality or to be treated casually. The procedure which is very stringent have to be adhered with to the letter according. This position has been upheld in a myriad of Court cases. I will only refer to a few of them for ease of reference. These are:- The reasoning behind this provision was well articulated in the case of:- *S. K. Tarwadi v Veronica Muehlmann* [2019] eKLR where the Judge observed as follows:

“...In my view, the essence of the Order 9 Rule 9 of the CPR was to protect advocates from the mischievous clients who will wait until a Judgment is delivered and then sack the advocate and either replace him ...”

The Learned Counsel submitted that Justice G. V. Odunga in *Lalji Bhimji Sanghani Builders & Contractors v City Council of Nairobi* [2012] eKLR it was held as follows:-

“In my view, the Court may when properly moved validate the coming on record by an advocate who was on record depending on the circumstances of the case. However, the Court is not entitled to simply ignore a procedural misstep. That in my view is the alternative that the Court of Appeal had in mind in the latter case. The alternative is not to ignobly disregard the rules of procedure since the said rules are meant to regulate administration of justice and not to assist the indolent. As was held by the Court of Appeal in *Hunker Trading Company Limited v Elf Oil Kenya Limited* Civil Application No. Nai. 6 of 2010:

“... the applicant cannot be allowed to invoke the “O2 principle” and at the same time abuse it at will. If improperly invoked, the “O2 principle” could easily become an unruly horse and therefore while the enactment of the “double O” principle is a reflection of the central importance the court must attach to case management in the administration of justice, in exercising the power to give effect to the principle, it must do so judicially and with proper and explicable factual foundation. The overriding principle will no doubt serve us well but it is



important to point out that it is not going to be a panacea for all ills and in every situation. A foundation for its application must be properly laid and the benefits of its application judicially ascertained”.

The said objective it has been held is a case management tool and therefore before the Court invokes the same the foundation for its application must be properly laid and the benefits thereof judicially ascertained. A party who without any justification decides not to follow the procedure laid down for orderly conduct of litigation cannot be allowed to fall back on the said objective or assistance and where no explanation has been offered for failure to observe the rules of the procedure the Court may well be entitled to conclude that the failure to comply therewith was deliberate.”

Issue No. b). Whether the Notice of Change of Advocates by Messrs. Machora Motuka & Company Advocate dated 22nd of February, 2023 and filed in Court on 24th of February 2023 indicating having been instructed to act for the 1st Defendant should be struck out.

8. Having laid down the legal principles, in order to fully appreciate the issues at hand, its significant that the Honourable Courts attempts to trace a little historical background of this matter in as far as rendering of professional legal service is concerned to the 1st Defendant herein. From the surrounding facts and inferences, there existed two suit – numbers 116 of 2015 and 74 of 2019 both at Mombasa. The ELC No. 116 of 2015 was filed by the Plaintiff through a Plaint dated 28th May 2015 in Mombasa ELC No. 116 of 2015 by the Law firm of Messrs. Musinga and Company Advocates. They remained on record until the 28th February 2017 when the Law firm of Messrs. M.S Shariff & Company advocates filed a Notice of Change of Advocates. The said Law then filed an Amended Plaint dated 6th July 2017. In the present suit - ELC (Mombasa) No. 74 of 2019, the said Law firm of Shariff & Company Advocates filed a Notice of Appointment of Advocates dated 26 June 2019. This meant that the said Law firm had entered an appearance on behalf of the 1st Defendant herein being Mr. Benson Mlambo Makina, Mr. Anthony Kishagha Mwasi and M/s. Florence Malandi who had been sued as the Chairperson, Secretary and Treasurer respectively – the of the Executive Committee of Kishamba “B” Group Ranch.
9. Ideally, the said Law firm of Messrs. Shariff & Company Advocates remained on record, filing various pleadings throughout the years and appearing in court proceedings on behalf of the ranch. In a surprise turn of events, the law firm of Messrs. Shariff filed an application dated 25th of January 2023 under Order 9 Rule 13 of the *Civil procedure Rules*, 2010 where they sought leave of court to cease acting for Mr. Mwasi for lack of proper and firm instructions from the said client. In the affidavit in support of the application, Ms. Winnie Julu expressed the wish of the firm to cease acting on behalf of Mr. Mwasi for severing the advocate-client relationship and for turning hostile to any legal advice offered. Soon after, the Law firm of Messrs. Machora Motuka & Company Advocates filed a Notice of Change of Advocates on 24 February 2023 in Mombasa ELC 74 of 2019, contending to have been appointed as the advocates for the 1st Defendant rather than Mr. Mwasi specifically in place of Shariff & Company Advocates. Clearly, failure to separate the specific clients between the 1st Defendant and Mr. Mwasi as an individual by the Advocates is where the rain started beating the matter in as far as the legal presentation is concerned. It is actually the pith and substance of this application. To me it’s a rather straight forward, plain and clear matter and hence an issue of splitting hairs.
10. As stated above, the main issue then before this honourable court for determination is who between the law firm of Messrs. Shariff & Company Advocates and the law firm of Messrs. Machora Mutoka & Company Advocates is properly on record for the 1st Defendants. Every one seem to be pulling in different direction. While Mr. Mwakina insists that Messrs. Shariff & Company Advocates are still on



record for the 1st Defendants on one hand; Mr. Mwasi on the other hand supports the appointment of Messrs. Machora Mutoka & Company Advocates as the proper law firm on record for Kishamba “B” Group Ranch.

11. In his Replying Affidavit in opposition to the application herein, Mr. Mwasi deponed that Mr. Mwakina was ousted as the Chairperson on the ranch on 14th July 2021 and has no authority to act on its behalf. Further, he deponed that the firm of Shariff has never been appointed to act for the ranch, instead, the law firm of advocates are the personal advocates of Mr. Mwakina. Mr. Mwasi maintained that there is no express evidence that the Law firm of Messrs. M.S Shariff has ever been instructed to represent the firm and that a Memorandum of Appearance cannot be taken as conclusive evidence that the firm was instructed to act. He maintained that the members of the ranch together with the steering committee have since appointed Mr. Brian Mutoka Advocate to act on behalf of the ranch as per the minutes of the meeting held on 16th July 2021. That is adequate as concerns the historical background and the facts of the matter.

Issue No. c). Whether the authorized representatives and/or advocates for the 1st Defendant remain to be Messrs. M.S Shariff & Company Advocates as per the Memorandum of Appearance dated 24th July 2019 and filed in Court on the 25th of July, 2019.

12. Under this sub heading, the Honourable Court will now apply the legal principles stated herein to the facts of the case. To start off, the 1st Defendant are incorporated as a Group Ranch hence a Corporate body under the provisions of [Land \(Group Representatives\) Act](#). Cap 287 of the Laws of Kenya with its commencement date being 28th June, 1968. The preamble of this Act states that it is to provide for the incorporation of representatives of groups who have been recorded as the owners of the land under the [Land Adjudication Act](#). It is envisaged that the Group ranch was established by the Minister of Lands for an area to accommodate the people who are ordinarily residents of the area where the suit land is situated based on their ethnic, clan or other common affiliations. The provision of Section 7 (1) of the [Act](#) the Group Representatives as the office bearers are appointed to hold the property belonging to the Group Ranch on its behalf and for the collective benefit of all the registered members of the Group Ranch in a Membership register. Upon being constituted the group ranch is issued with a Certificate of Incorporation bearing the names of all the group ranch Representatives. The Group ranch is a body corporate with perpetual succession powers to acquire and sell assets; be sued and sue in its own names. All the decisions of the Group Ranch are collectively as opposed to individually done. Section 17 (1) holds that every group ranch shall maintain a membership register with full details of all the persons with disability and deceased.
13. From the records, the 1st Defendant comprises of over 4, 209 registered members of a community known as Kishamba “B” Group Ranch living and claiming under customary law the suit property. That prior to the enactment of the Community Land Act, the ownership was governed by the 1st Defendant who are still to comply with the current law – [Community Land Act](#). The Court wishes not to digress further and resume to the issues at hand. Further, it is important to note that instructions to act can be in writing, oral or by actions between an Advocate and client. Mr. Kishagha’s sentiments in his Replying Affidavit that instructions to act must be expressly stated either by way of resolution by the committee or members of the ranch do not suffice. The court in the case of [“Ochieng’ Onyango, Kibet & Ohaga Advocates v Akiba Bank Limited](#) [2007] eKLR where the Court held that:-

“It is to be observed, however, there is no such thing in law as adopting or sanctioning anything except where there is ratifying of an act professedly done on one’s behalf in such a sense as to make you liable for it. It appears when the bank came to know the Respondent was acting on its behalf, it agreed to treat the representation as more formal. The act of



authorizing an Advocate to act on behalf of a client constitutes the Advocate's retainer by the client. It is not the law that an Advocate must obtain a written authority from the client before he commences a matter. The participation and authority of an Advocate in a matter can be implied or discerned from the conduct of the client."

14. The conduct of the 1st Defendant – through its representatives - has been that the Law firm of Messrs. MS Shariff & Co Advocates as the advocates on record both the ELC. No. 116 of 2015 and ELC No. 74 of 2019. In ELC No. 74 of 2019 from the day they filed a Notice of Appointment of Advocates on 26th June 2019 until this dispute arose. It is also seen from the pleadings in ELC No. 116 of 2015, the law firm was on record for the ranch from the 28th of February 2017 when they filed a Notice of Change of Advocates. I have perused both files and I do note that in ELC No. 116 of 2015, there are pleadings where Mr. Mwasi has sworn affidavit prepared by the Law firm of Messrs. Shariff & Co Advocates. For instance, on 7th June 2017, the firm of Shariff & Co Advocates filed an application seeking an interlocutory injunction against the Defendants. The affidavit in support of the said application was sworn by one Anthony Kishaga Mwasi.
15. It is evident that the participation and authority of the M/s. Shariff Advocates to act in this matter can be implied or discerned from the conduct of the 1st Defendant. The court has established that the pleadings herein were prepared by the firm of advocates on behalf of the ranch, and a majority of the affidavits were either sworn by Benson Mlambo or Anthony Kishaga in their capacity as the Chairperson and Secretary to 1st Defendant, the Group ranch. In my view, the Law firm of Messrs. MS Shariff & Co. Advocates has had authority given by the 1st Defendants to act herein and in ELC No. 116 of 2015 and in a particular manner. The conduct of the 1st Defendant herein was to be represented by the said firm and the averments by Mr. Mwasi that the ranch never instructed the firm to act is a mere denial.
16. My personal take is that there has been a disagreement between Mr. Mwasi and the Advocates which was treated as an individual discourse. Even where an advocate-client relationship has gone sour, it is important to determine whether the advocate was instructed in the first place. There is no doubt that the Law firm of Messrs. Shariff & Co advocates were the initial advocates on record for the ranch. The averments by Mr. Mwasi that the said law firm was the personal advocate of Mr. Mlambo, who was removed as the ranch chairperson can only be far from the truth. From the evidence on record, the Law firm has at all material times acted in the interest of the group ranch until a seeming dispute ensued between the firm and Mr. Mwasi which has led the firm to seek leave to cease acting on his behalf. I guess, this decision to cease acting was erroneous legal procedure and perhaps even added the spanners in the works. It was assumed they were acting for Mr. Mwasi as an individual and not the 1st Defendant as a Corporate body. Perhaps just a letter of complaint by the Advocates to the Group ranch would have sufficed.
17. For emphasis, it is evident from the pleadings that the ranch as a whole has benefited from the services of Messrs. Shariff Advocates. It is rather unfortunate that due to the ostensible disputes among the top leadership, there is a sharp divide on which law firm between Shariff and Mutoka has the best interest for the ranch. In my view, Mr. Mwasi who is behind Mr. Mutoka Advocate is the one creating the wild storm in the ocean and wishes to have the ship capsize to oblivion to his advantage. He wants to bite the hand that fed his legal representation for a significant amount of time. He has to be controlled and guided properly before he causes more havoc. By being the deponent in various pleadings drafted by the law firm of Messrs. Shariff, Mr. Mwasi was giving the firm instructions to unequivocally and clearly represent him in the matter. If currently Mr. Mwasi has become dissatisfied with the said legal professional representation, he should be free like the birds in the air to be at liberty walk away peacefully and seek the legal services of another advocate which includes Mr. Brian Mutoka



trading under the law firm of Messrs. Machora Muthoka & Company Advocates or any other to act for him in his personal capacity and not necessarily drag the whole ranch with him while doing so. For these reasons, I hold, unless otherwise stated, that the Law firm of Messrs. MS Sheriff & Company Advocates are the ones properly on record for the Kishamba “B” Group Ranch in both civil matters.

Issue No. d). What are the directions granted by this Honourable Court in causing the matter to be expeditiously heard and determined in accordance with the pronouncement made by the Court of Appeal.

18. Under this sub heading the Court has a duty and an obligation to provide practical and tangible direction on this matter going forward in the fullness of time hereof. In saying so, I wish to trace some facts briefly. On 26th February, 2020, this Court did strike out the entire suit – ELC No. 74 of 2019 - instituted by the Plaintiff herein – Mr. John Kivure and 7 others. The Honourable Court found that the suit was bad in law ‘ab intio”, fatally and incurably defective for want of leave to file it in representative capacity and for want of written authority contrary to the provision of Order 1 Rule 1, 12, 13 (2) (b) (c) and (d) and 18 of the Civil Procedure Rules, 2010. The Court termed it as not being a representative suit under Order 1 Rule 8 of the Civil Procedure Rules, 2010 taking that there was no notice to all those affected by either personal service or by way of public advertisement as Court may direct. The Court held that they lacked “locus Standi” to institute this suit on behalf of the 4209 members of the Group Ranch.
19. Being aggrieved by that decision, the Plaintiff preferred an appeal before the Court of appeal. After a while, the matter was heard and eventually finally determined in favour of the Plaintiff. The Court of Appeal in its Ruling provided specific guidelines on how to have the matter heard and finalized expeditiously. Therefore, based on that guidelines, this Court now proceeds to fixe the case for an early hearing date.
20. Luckily, there is now through a Kenya Gazette Notices published on 14th April, 2023, with effect from 1st July, 2023 the Chief Justice did establish an Environment and land Court at Voi. Its already in operation and hence this matter will be transferred there for both logistical and geographical jurisdiction. Thus, the matter has been secure an early hearing date. Parties are expected to have fully complied with the provisions of Order 11 of the Civil Procedure Rules, 2010 on Pre – Trial conference to avoid causing any hindrance to the set out hearing dates.

Issue No. e). Who will bear the Costs of the application

21. The issue of costs are at the discretion of the Honourable Court. The provision of Section 27 (1) of the Civil Procedure Act, Cap. 21 holds that costs follow the events. Although the Applicant has been successful, taking that this matter is still proceeding on, its just fair that the costs being in the Cause.

VI. Conclusion & findings.

22. In conclusion, having conducted an elaborate analysis of the framed issues, the Honourable proceeds to make the following orders:-
 - a. That the Notice of Motion application dated 6th June 2023 be and is found to have merit and hence allowed as prayed.
 - b. That the Law firm of Messrs. Shariff & Co. Advocates are and should still properly on record for the 1st Defendants acting on behalf of the Kishamba “B” Group Ranch, a legal Corporate body incorporated under “The Land (Group Representatives) Act, Cap. 287 of the Laws of



Kenya - pursuant to the provisions of Order 9 Rules, 1, 2, 3, 4, 5, 6 and 7 of the Civil Procedure Rules, 2010 and the Advocates Act.

- c. That should Mr. Anthony Kishagah Mwasi be displeased with the legal representation offered by the said law firm of Messrs. Shariff & Company Advocates he shall be at liberty to appoint any legal representation of his choice including Mr. Brian Mutoka Advocate under the law firm of Messrs. Muchora Mutoka Advocates or any other Advocate of his choice for that matter to personally represent him in the matter as provided for under the provision of Article 50 (2) (g) of the Constitution of Kenya, Order 9 of the Civil Procedure Rules, 2010.
- d. That for expediency sake, this matter to be heard on 26th January, 2024 at the Voi, ELC. All parties are directed to ensure that they fully comply and strictly adhere with the provision of Order 11 of the Civil Procedure Rules, 2010.
- e. That the costs of the application to be in the cause.

IT IS SO ORDERED ACCORDINGLY

RULING DELIVERED THROUGH THE MICROSOFT TEAMS VIRTUAL MEANS, SIGNED AND DATED AT MOMBASA THIS 31ST OF OCTOBER 2023

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**HON. JUSTICE L.L. NAIKUNI (MR.),
ENVIRONMENT & LAND COURT AT
MOMBASA**

Ruling delivered in the presence of:

- a. M/s. Yumnah Hassan, the Court Assistant.
- b. Mr. Vincent Olala holding for Mr. Litoro Advocate for the Plaintiffs.
- c. No appearance Advocate for the 1st Defendant.
- d. No appearance for the 2nd Defendant.
- e. Mr. Makuto Advocate for the Honorable Attorney General.

