



**Onzere v Nanyama (Environment and Land Appeal 15 of 2022)
[2023] KEELC 21846 (KLR) (31 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 21846 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT AND LAND APPEAL 15 OF 2022
FO NYAGAKA, J
OCTOBER 31, 2023**

BETWEEN

EPHRAIM A ONZERE APPELLANT

AND

SELINA NANYAMA RESPONDENT

RULING

1. The appellant herein brought the instant appeal against the Respondent following a decision by the Honourable Principal Magistrate on 20/7/2022 in Kitale CMCC No.50 of 2020. Before the appeal could be heard the Respondent filed submissions undated. That was on 9/10/2023. That was through learned counsel.
2. Following the filing the Respondent moved this court to strike out the submissions on account of the fact that they were signed by a clerk in the law firm and not an advocate. Considering the fact that the claim of signing and filing of documents in court by unqualified person is a serious allegation, this court deemed it fit to determine the validity or otherwise of the submissions on record as a preliminary issue. It thus summoned the clerk who was alleged to have signed the documents for purposes of shedding light on the allegation. This is in line with the rules of natural justice that a party should not be condemned unheard.
3. On 31/10/2023 the clerk, one Job .W Muhinda appeared before the court and was called upon to state what he knew about the signed and filed document. He stated on oath that he did not sign the document. He attributed the signature to one learned counsel who was said to be an associate in the said firm. Learned counsel who signed the document was in court. He too stated that he actually was the one who signed the document and not the clerk. He admitted, however, that the said document filed by the firm of Seneti Oburu & Co Associates was signed, and filed following a duly signed consent for the said law firm to come on record on behalf of the respondent by taking over the conduct of the appeal from a law firm previously on record before judgment was entered.



4. Thus, the question of the validity on record of the said submissions also arose. The reasons was that the consent was signed by the advocates who drew the submissions and a law firm whose proprietor had been struck off the Roll of Advocates much earlier than the filing. The said proprietor was also the sole practitioner in the law firm and the signature was said to be his.
5. I have considered the application before me. I am of the view that the only issue then that arises is whether or not both the consent for the lawyer to come on record and the submissions are properly on record. I have narrowed down the issue to that because the issue of who signed the submissions is now settled. They were not signed by an unqualified person as defined under Section 2 of the [Advocates Act](#), Chapter 16 of the Laws of Kenya. A qualified person is defined under Section 9 of the [Advocates Act](#).
6. Section 31 of the Act provides that unqualified persons would not act as advocates. That includes appending signatures on documents for and on behalf of advocates, purporting such endorsements to give legal authority on behalf of the Advocates. Such persons can only receive documents on behalf of Advocates if they are clerks in their law firms.
7. In regard to the validity of the consent and submissions, the starting point is Order 9 Rule 9 of the [Civil Procedure Rules](#). This provision comes into play in the instant matter because when the judgment appealed from was delivered, the Respondent had engaged the services of a law firm whose name was M/s Simiyu Wafula & Co Advocates. Judgment having been so entered and the party wished to engage another law firm, he was obligated to replace the said law firm either by the law firm which he instructed afterwards filing an application to come on record on his behalf and replacing the previous one, and having the application duly determined and an order given, or filling a consent signed between the previous and the 'new' or subsequent advocates that the latter be permitted to come on record. The Respondent chose the second step. A consent was duly signed. But the question that then arises is does an Advocate who is struck out of the Roll of Advocates have the capacity to sign any documents? Section 24(3) of the [Advocates Act](#) provides that once the name of an advocate is removed from or struck off the Roll of Advocates, his practicing certificate expires forthwith. It therefore means he cannot purport to lawfully practice. The further implication is that the said Advocate automatically becomes an unqualified person. This is because Section 9(c) of the Act provides that a person shall not be qualified to act as an advocate unless he has in force a practicing certificate. It goes without saying then that the advocate whose name is struck off the Roll of Advocates is not permitted to sign documents as above indicated or found. He cannot be permitted also to charge any fee due to an Advocate.
8. In the instant case, the proprietor of the previous law firm was struck off the Roll by the time he purported to sign the consent. It means the consent was signed by an unqualified person. An unqualified person cannot give authority to anyone to come on record in any proceedings before a court of law. Further, he cannot purport to act. Therefore, the consent signed by the said parties legal counsel and the purported qualified individual struck off the Roll of Advocates was null and void. It further follows that the submissions filed were improperly on record as their way onto the record was fundamentally flawed.
9. Actually, it was not flawed once but twice. First it was filed without lawful authority to come on record being obtained by learned counsel. Secondly, even though the consent could have been valid, that could not authorize learned counsel to simply file the submissions. He ought to have first filed and served a Notice of Change of Advocates in terms of Order 9 Rule 5 of the [Civil Procedure Rules](#), 2010.
10. The conclusion of this matter is that the consent and submissions are hereby struck out.

RULING DATED, SIGNED AND DELIVERED AT KITALE VIA ELECTRONIC MAIL THIS 31ST DAY OF OCTOBER, 2023.



HON. DR. IUR FRED NYAGAKA
JUDGE, ELC, KITALE

