



REPUBLIC OF KENYA



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Taita Hills and Salt Lick Wildlife Resort Limited v Mwangombe & 8 others
(Environment & Land Case 12 of 2023) [2023] KEELC 20970 (KLR)
(Environment and Land) (25 October 2023) (Ruling)

Neutral citation: [2023] KEELC 20970 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VOI
ENVIRONMENT AND LAND
ENVIRONMENT & LAND CASE 12 OF 2023
SM KIBUNJA, J
OCTOBER 25, 2023
(FORMERLY MOMBASA ELC NO. 111 OF 2020)

BETWEEN

TAITA HILLS AND SALT LICK WILDLIFE RESORT LIMITED PLAINTIFF

AND

JOSEPHAT MVOI MWANGOMBE 1ST DEFENDANT
MBULI MWALIKO MGHENYU 2ND DEFENDANT
STANELY KATUU MWAMBULA 3RD DEFENDANT
JAVAN KIRUBAI MWAKISAGHU 4TH DEFENDANT
HERMAN MWANGEMI RIGHA 5TH DEFENDANT
MWADIME MUGHOYA MWANJEVE 6TH DEFENDANT
DORA CHAO 7TH DEFENDANT
CHRISTOPHER NYANGE 8TH DEFENDANT
ALIA COMMUNITY 9TH DEFENDANT

RULING

1. The record confirms that this suit was commenced by the plaintiff against the defendants through the plaint dated the August 27, 2020 that was filed on the September 1, 2020 through M/s Ndegwa & Sitonik Advocates.



2. That also on record are the defendants’ statement of defence & counterclaim dated the 28th April 2021, undated defendants list of witnesses, defendants list of documents dated April 28, 2021, and replying affidavit of Dora Chao [7th defendant] sworn on the October 10, 2022 that were drawn and filed through M/s Wilfred K. Babu & Company Advocates for the defendants. There is also witness statements of Dora Chao and Herman Mwangemi Righa dated 2April 8, 2021.
3. That further on record is the notice of appointment of advocates dated the March 27, 2023 drawn and filed by M/s Mwazighe & Co. Advocates for the “1st, 4th, 6th and 8th defendants.” That also on record is the notice of motion under certificate of urgency dated the April 4, 2023 drawn and filed through M/s Mwazighe & Co. Advocates for the “defendants.”
4. When this matter came up for mention on the September 25, 2023 Mr. Karina advocate for the plaintiff raised an objection to Mr. Mwazighe advocate appearing for the defendants as he had not filed and served a notice of change of advocates. Mr. Mwazighe responded that his clients had not instructed any other advocate to represent them in this matter before him. The matter came up for mention again today the October 23, 2023, when Mr. Karina and Mr. Mwazighe advocates made further submissions on the same issue. It was Mr. Mwazighe’s case that as his clients were previously in person, he was in order to file the notice of appointment of advocates dated the March 27, 2023 that he served upon the counsel for the plaintiff on the July 4, 2023. That after the last mention, his efforts to peruse the court record and confirm whether his clients had indeed another advocate before instructing him did not materialize as the file could not be traced. Mr. Karina advocate submitted that no document relating to Mr. Mwazighe’s appointment as an advocate for the defendants has been served upon him. That as the defendants already had a counsel on record, Mr. Mwazighe needed to file and serve a notice of change of advocates which he had not done. That the application dated the April 4, 2023 filed through M/s Mwazighe & Co. Advocates should be expunged from the record.
5. There is only one issue for the court’s determination and that is whether or not M/s Mwazighe & Co. Advocates is properly on record for the defendants, or some of the Defendants.
6. The court has carefully considered the record, pleadings filed as summarized above, oral submissions by the learned counsel and come to the following findings:
 - a. That Order 9 Rule 1 of the *Civil Procedure Rules* makes provisions for “applications, appearances or acts in person, by recognized agents or by advocate” [see margin note] in the following words;

“ Any application to or appearance or act in any court required or authorized by 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: ...”

Change of advocate is guided by Order 9 Rule 5 of the *Civil Procedure Rules* that provides that;

“ 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 that 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 rule 12 and 13 be considered the advocate of the party until the final conclusion of the cause or matter, including any review or appeal.”



On the issue of notice of appointment of advocate, Order 9 Rule 7 of the [Civil Procedure Rules](#) provides as follows;

“Where a party, after having sued- or defended in person, appoints an advocate to act in the cause or matter, he shall give notice of the appointment, and the provisions of this Order relating to a notice of change of advocate shall apply to a notice of appointment of an advocate with the necessary modifications.”

The even though there is no notice of appointment of advocates on record filed by M/s Wilfred K. Babu & Company Advocates, the fact that the pleadings and other documents detailed in (2) above were drawn and filed through that firm of advocates for the defendants, and in the absence of evidence to the contrary, leads the court to conclude that the said firm did so on instructions of the defendants, in compliance with Order 9 Rule 1 of the [Civil Procedure Rules](#).

- b. That having found as in (a) above that the defendants had as a matter of fact already filed their pleadings and other documents through M/s Wilfred K. Babu & Company Advocates, then M/s Mwazighe & Co. Advocates was obligated to ensure the appropriate notice of change of advocates, and not notice of appointment of advocates, was filed and served upon counsel for the plaintiff when the purported to come on record for the defendants or some of the defendants. The counsel could easily have confirmed this position had he taken steps to peruse the court record upon receipt of instructions so as to determine what notice to file and avoid unnecessary delaying the matter and exposing the parties to incur further costs.
 - c. That the notice of appointment of advocates dated the March 27, 2023 by M/s Mwazighe & Co. Advocates was filed in contravention of Order 9 Rule 5 of the [Civil Procedure Rules](#) and is hereby struck out. That it follows that the notice of motion under certificate of urgency dated April 4, 2023 drawn and filed through M/s Mwazighe & Co. Advocates was filed by counsel not properly on record for the defendants or any of the defendants and is hereby struck out with costs. That the plaintiff's costs in the application is to be paid by M/s Mwazighe & Co. Advocates notwithstanding the provisions of section 27 of the [Civil Procedure Act](#) chapter 21 of Laws of Kenya.
7. Flowing from the above conclusions, the court finds and orders as follows:
- a. That the defendants already have a counsel being M/s Wilfred K. Babu & Company Advocates, and if M/s Mwazighe & Co. Advocates has been appointed to come on record for the defendants or some of the defendants, then the appropriate notice of change of advocate must be filed and served in accordance with Order 9 Rule 5 of the [Civil Procedure Rules](#).
 - b. That the notice of appointment dated the March 27, 2023 by M/s Mwazighe & Co. Advocates and the notice of motion under certificate of urgency dated the April 4, 2023 by the defendants that was filed through M/s Mwazighe & Co. Advocates are hereby struck out with the plaintiff's costs to be met by the said firm of advocates.

Orders accordingly.

DATED AND VIRTUALLY DELIVERED THIS 25th DAY OF OCTOBER 2023.

S. M. KIBUNJA, J.

ELC MOMBASA.

IN THE PRESENCE OF:



Plaintiff : Mr Karina.

Defendants : Mr. Mwazighe

Wilson – Court Assistant.

S. M. KIBUNJA, J.

ELC MOMBASA.

