



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**COMMERCIAL AND TAX DIVISION**  
**CIVIL SUIT NO. 128 OF 2018**

JOSEPH WANGOMBE THUO.....1ST PLAINTIFF

JANE WANJIRU WANGOMBE.....2ND PLAINTIFF

VERSUS -

BANK OF AFRICA KENYA LIMITED.....DEFENDANT

**RULING**

1. The two plaintiffs in this matter filed this suit on **3rd November, 2015**. At the time of filing the suit, they were represented by the law firm of **Munyasya & Co. Adv.**

2. On **24th November, 2015** Judgment was entered in favour of the defendant as against the plaintiffs for **Ksh. 12,394,435.98**. In that consent signed by counsels of the plaintiffs and the defendant, a schedule of payment of that agreed amount was set out. The court adopted that consent on **24th November, 2015**. Accordingly, a decree was drawn in terms of that consent.

3. An application dated **29th March, 2018**, was filed on behalf of the plaintiffs by the law firm, **Muturi Njoroge & Co. Advocates**. It was not on record that the said firm of lawyers obtained the leave of the court as required under **Order 9 Rule 9 of the Civil Procedure Rules**, nor is it on record that the firm of Muturi Njoroge & Co. Advocates filed a **Notice of Appointment**.

4. The defendant raised a **Preliminary Objection** to the plaintiffs, filed by the law firm **Muturi Njoroge & Co. Advocates**. The basis of that objection was that the application offends **Order 9 Rule 9 of the Civil Procedure Rules**.

5. Order 9 Rule 9 provides:

***“When there is a change of advocates, 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.”***

6. Looking at the above provision, and considering the background of this matter as set out above, that judgment by consent was entered on **24th November, 2015** and a decree was drawn, a new advocate could not act for the plaintiffs without the leave of the court being obtained.

7. It is because of the above finding that this court finds that there is merit in the defendant’s Preliminary Objection dated **18th May, 2018**, and it is upheld. The applications, the two of them, filed and dated **29th March, 2018** by the law firm of **Muturi Njoroge & Co. Advocates** are hereby struck out with costs to the defendant. It is so ordered

**DATED, SIGNED and DELIVERED** at **NAIROBI** this **13th** day of **June** 2018.

**MARY N. KASANGO**

**JUDGE**

**Ruling read in open court in the presence of**

Court Assistant.....Sophie

.....for the 1st Plaintiff

.....for the 2nd Plaintiff

.....for the Defendant