



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NUMBER 3619 OF 1983

GITHARA CHUCHU & 473 OTHERS. PLAINTIFFS

VERSUS

GITITU COFFEE GROWERS CO-OP SOCIETY LTD. 1ST DEFENDANT

KENYA PLANTERS CO-OPERATIVE UNION. 2ND DEFENDANT

R U L I N G

1. The Plaintiffs' herein, took out the motion dated 15th November, 2017 in which they sought for inter alia: -

a. Spent.

b. Paragraphs No. 1 of the CONSENT ORDER dated 28th day of July, 2008 concerning Kshs.5,000,000/- deposited at the Commercial Bank of Africa Limited, Nairobi, in the joint names of Hamilton, Harrison and Matthews and Chege Wainaina & Co. Advocates be amended by removing the name of M/S CHEGE WAINAINA & CO. ADVOCATES from the said joint account and replacing/substituting the same with the name of M/S NABUTETE & CO. ADVOCATES who are the Plaintiffs/Applicants' advocates.

c. Commercial Bank of Africa at Nairobi be ordered/directed to effect changes forthwith.

d. Costs of this application be provided for.

2. The aforesaid motion is supported by the affidavit of Njoroge Mburu and the Supplementary affidavit of Simon Chuchu. When served with the aforesaid motion, the firm of Chege Wainaina & Co. Advocates, filed the replying affidavit of Dennis Mwangi Maina to oppose the same.

3. When the motion came up for inter parties, learned counsels appearing in the matter urged this court to determine the motion on the basis of the material placed before court.

4. I have considered the grounds stated on the face to the motion dated 15th November, 2017 and the facts deponed in the affidavits filed in support and against the motion.

5. It is the submission of Mr. Nabutete, learned advocate for the plaintiffs that when the consent order was entered into on 28th July, 2008, the main advocate was out of town and the then advocate M/s Chege Wainaina & Co. Advocates did not consult the Plaintiffs/Applicants.

6. It was further pointed out that the firm of Chege Wainaina & Co. Advocate has ceased to represent the Plaintiffs/Applicants and therefore, the Plaintiffs are seeking to have their lawyer's name on that account removed and be replaced with the one of Nabutete & Co. Advocates.

7. This court was beseeched to find that it is in the interest of justice to allow the application and have the name of Nabutete & Co. Advocates placed on the account pending the outcome of the appeal to protect the Plaintiff's interest.

8. The firm of Chege Wainaina & Co. Advocates strenuously opposed the application arguing that Mr. Nabutete, Practicing as Nabutete & Co. Advocates was not the Plaintiffs' main lawyer at the time. The aforesaid firm further argued that it was false to state that the Plaintiffs are the beneficiaries of the amount of Ksh.5,000,000/- since the same is being held as security for costs and that the Plaintiffs can only benefit from the same if the application pending before the court of appeal is dismissed.

9. This court was further informed that should the orders sought be allowed, the firm of Chege Wainiana & co. Advocate may not be paid its

legal fees and reimbursements.

10. Having considered the competing arguments, it is not in dispute that on 12th July, 2006 that this court made an order to inter alia, order Kenya Planters Co-operative Union, the 2nd Defendant to pay the Plaintiffs a sum of Ksh.13,251,549/95 plus interest from 19th April, 1983 within 30 days.

11. Being dissatisfied with the aforesaid orders, the 2nd Defendant filed a Notice of Appeal and applied for stay of execution pending appeal. Eventually the 2nd Defendant was granted an order for stay on condition that it deposited a sum of Ksh.5,000,000/- in an interest earning account in the joint names of the firms of advocates of Hamilton Harrison & Matthews and Chege Wainaina & Co. Advocates. The order was complied with.

12. It is also clear from the contents of the supplementary affidavit of Simon Chuchu that the firm of Nabutete & Co. Advocates has always been the advocates representing the Plaintiffs.

13. I am also convinced that the firm of Chege Wainaina & Co. Advocates did not replace the firm of Nabutete & Co. Advocates to appear for the Plaintiffs but the aforesaid firm appeared alongside.

14. The firm of Chege Wainaina & Co. Advocates appear to concede that the firm of Nabutete & Co. Advocates has effectively taken over the Plaintiffs' matter in its place.

15. The main complaint raised by the firm of Chege Wainaina & Co. Advocates, is that, if the orders sought are granted, it may not be paid its fees and disbursements.

16. The purpose of the deposit is a condition for the grant of the order for stay. The firm of advocates now appearing for the plaintiffs is the firm of Nabutete & Co. Advocates.

17. The firm of Chege Wainaina & co. Advocates having been edged out from representing the Plaintiffs, it should not continue being a party nor a signatory to the joint interest earning account. The claim by the firm of Chege Wainaina & Co. Advocates can be addressed through other means but not through this motion.

18. In the end, I find the motion dated 15th November, 2017 to be meritorious. It is allowed in terms of prayers (b) and (c). However, in the circumstances of this case, a fair order on costs is to direct which I hereby do that each party meets its own costs.

Dated, signed and delivered in Nairobi this 16th day of August, 2018.

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J K SERGON

JUDGE

In the presence of

..... *for the Plaintiffs*

..... *for the 1st Defendant*

..... *for the 2nd Defendant*

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