



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MIGORI

CIVIL CASE NO. 1 OF 2016

SPEEDWALL BUILDING TECHNOLOGIES LIMITED....PLAINTIFF

-VERSUS-

THE COUNTY GOVERNMENT OF MIGORI.....DEFENDANT

RULING

1. This is a ruling in respect of a Preliminary Objection raised by the Plaintiff's Counsel **Mr. Roche Odhiambo** under **Order 9 Rule 9** of the **Civil Procedure Rules, 2010** to the effect that the firm of **Messrs. Odhiambo Oronga & Company Advocates** is improperly on record therefore any Counsel appearing on its behalf has no right of audience before Court and all documents filed by that firm of Advocates ought to be expunged from the record.

2. **Mr. Oronga** Counsel opposed the objection and argued that the objection was misplaced as it was based on a technicality which has no place in light of **Article 159** of the **Constitution**. He prayed that the same be dismissed with costs. In a rejoinder, **Mr. Odhiambo** urged this Court to find that the issue of legal representation of a party is more than a technicality since it is a substantive issue which exudes order and decorum in litigation.

3. **Order 9 Rule 9** of the **Civil Procedure Rules, 2010** provides for instances where there is a change of Advocate in civil litigation after judgment. It states that: -

'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 by 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.'

4. The background of the Defendant's legal representation in this matter is that it initially instructed the firm of **Messrs. Sagana, Biriq & Company Advocates** to represent it. Two Memoranda of Appearance were duly filed on 03/05/2016 and 20/06/2016 respectively by the same firm of Messrs. Sagana, Biriq & Company Advocates. As no Defence was filed, the matter then proceeded for hearing *ex parte* and a judgment was rendered on 16/02/2017. Execution of the judgment was instituted vide **Migori High Court Judicial Review No. 1 of 2018** where leave was granted, and the substantive application is now pending.

5. On 11/05/2018 the firm of **Messrs. Odhiambo Oronga & Company Advocates** on instructions of the Defendant filed a Notice of Appointment of Advocates which was tailored as follows: -

NOTICE OF APPOINTMENT OF ADVOCATES

TAKE NOTICE that the Defendant herein, THE COUNTY GOVERNMENT OF MIGORI has appointed the firm of M/S ODHIAMBO ORONGA & CO ADVOCATES 2nd FLOOR, K. N. BUILDING, P. O. BOX 813 -40400, SUNA MIGORI to act and conduct this matter on their behalf.

ALL FUTURE correspondence and service should henceforth be directed the said firm.

6. It is the above Notice of Appointment of Advocates that prompted the preliminary objection. **Order 9 Rule 9** of the **Civil Procedure**

Rules, 2010 applies to instances where a party opts to change its Advocate after judgment. The provision clearly safeguards the outgoing Advocate. In this matter however, the Defendant through the firm of Messrs. Odhiambo Oronga & Company Advocates did not change its Advocates. The Defendant instead appointed a further Advocate to appear on its behalf. The question which readily comes to the fore is whether a party in a civil litigation can be represented by more than one firm of Advocates.

7. The issue of legal representation has a constitutional underpinning and it cuts across various Articles of the **Constitution**. **Article 260** of the **Constitution** defines a 'person' to include 'a company, association or other body of persons whether incorporated or unincorporated'. The Defendant being a body corporate under **Section 6** of the **County Government Act No.17 of 2012** is therefore a person in law and has rights and fundamental freedoms as provided for in the **Constitution**. Some of the Defendant's rights and fundamental freedoms which come to the fore in this matter include the **Right to life** (Article 26), **Right to Equality and Freedom from discrimination** (Article 27), **Right to inherent dignity** (Article 28), **Freedom and security** (Article 29), **Freedom of expression** (Article 33), **Consumer rights** (Article 46), **Fair Administrative action** (Article 47), **Access to justice** (Article 48) and a **Right to a Fair hearing** (Article 50).

8. From the reading of the above constitutional provisions I do not see any bar to a party being represented by more than one firm of Advocates if such a party so chooses. However, there should be some Rules to regulate such instances including whether there should be a leading firm of Advocates, issues of service of processes, whether each firm is entitled to full fees in the event of succeeding in the matter considering the need to safeguard access to justice among others. Those are issues which fall under the realm of the Rules Committee and since the **Civil Procedure Rules, 2010** are silent, it is imperative that the issues be looked into. To that end the Deputy Registrar of this Court shall transmit a copy of this ruling to the Rules Committee for consideration.

9. As I come to the end of this ruling, I must state that had the firm of Messrs. Odhiambo Oronga & Company Advocates instead filed a Notice of Change of Advocates instead of a Notice of Appointment of Advocates I would have declined to treat that as a technicality but rather a substantive issue resulting to striking out all the documents filed by the firm which would then be irregularly on record.

10. The upshot of the foregone are the following orders: -

a) The Preliminary Objection is dismissed with costs.

b) The Notice of Motion dated 10/05/2018 and the Notice of Motion dated 02/03/2018 in Migori High Court Judicial Review No. 1 of 2018 shall be heard together on a date to be fixed in the Registry.

c) The firm of Messrs. Odhiambo Oronga & Company Advocates shall be the one to be served with any process in this matter.

Orders accordingly.

DELIVERED, DATED and SIGNED at MIGORI this 08th day of August 2018.

A. C. MRIMA

JUDGE

Ruling delivered in open court and in the presence of: -

Mr. Roche Odhiambo instructed by the firm of Odhiambo & Co. Advocates for the Plaintiff.

Mr. Odhiambo Oronga instructed by the firm of Odhiambo Oronga & Company Advocates for the Defendant.

Evelyne Nyauke – Court Assistant