



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

ELC CASE NO. 34 OF 2015

MOSES NDEGWA GATIMU.....APPLICANT/PLAINTIFF

VERSUS

WANJIRU KITHUMU.....1ST RESPONDENT/DEFENDANT

COUNTY GOVERNMENT OF KIRINYAGA.....2ND RESPONDENT/DEFENDANT

RULING

By a Notice of Motion filed herein on 22nd September 2015 by the firm of Gori Ombongi and Company Advocates, the applicant seeks leave to file his Memorandum of Appeal out of time. However, the firm of Munene Wambugu and Kiplagat Advocates for the 2nd respondent have filed a Preliminary Objection to the application citing the following grounds and relying on the provisions of **Order 9 Rules 5, 6 and 9 of the Civil Procedure Rules** i.e.

- 1. That the firm of Gori Ombongi & Company Advocates are not properly on record.***
- 2. That the application dated 22nd September 2015 is incompetent having been filed by a stranger to the proceedings and ought to be struck out with costs.***

That Preliminary Objection is the subject of this ruling and it was canvassed before me orally with Ms Wanjiru for the 2nd respondent arguing that since the firm of Gori Ombongi and Company Advocates did not act for the applicant in the subordinate Court, it should have filed a notice of change of advocate because the firm of Maina Kagio Advocates is still on record for the applicant having acted for him in the subordinate Court. It is Ms Wanjiru's contention therefore that the firm of Gori Ombongi and Company Advocates are not properly on record for the applicant and therefore the Notice of Motion filed by them ought to be struck out with costs.

In response, Mr. Gori told the Court that his firm filed a notice of appointment of advocates in the subordinate Court which shows that both his firm and that of Maina Kagio Advocates are acting together and so there was no need for his firm to file a notice of change of advocate. In any case, the firm of Maina Kagio Advocates has no objection to their coming on record and besides, this is now a new case. He urged me to dismiss the Preliminary Objection with costs as it is only meant to delay the application. Ms Wanjiru responded however that the Preliminary Objection is not intended to scuttle these proceedings but that the law should be followed.

I have considered the Preliminary Objection and I am satisfied that it raises points of law as defined in the case of **MUKHISA BISCUIT COMPANY LTD VS WEST END DISTRIBUTORS 1969 E.A 896.** Having said so, I am not persuaded that the Preliminary Objection can be sustained. The firm of Gori Ombongi and Company Advocates have only filed a notice of appointment of advocates to act for the

applicant together with the firm of Maina Kagio Advocate. They do not intend to take over the brief from the firm of Maina Kagio Advocates which is what **Order 9 Rule 5, 6 and 9 of the Civil Procedure** deals with. There is no change of advocate in the circumstances of this case and there is no limit to the number of advocates that a party can instruct to act for him. What the applicant seeks is to have both the firms of Gori Ombongi Advocates and that of Maina Kagio Advocates to act for him in the intended appeal. There is nothing in **Order 9 Rules 5, 6 and 9** that bars the firm of Gori Ombongi and Company Advocate to act in this matter jointly with the firm of Maina Kagio Advocates. Indeed the application was, as a sign of good faith, also served upon the firm of Maina Kagio Advocates who have not filed any objection to the same.

In the circumstances, I find no merit in the Preliminary Objection filed herein on 11th November 2015 and the same is accordingly dismissed with costs.

B.N. OLAO

JUDGE

26TH FEBRUARY, 2016

Ruling delivered this 26th day of February, 2016 in open Court

Ms Kiragu for 1st Respondent present

Mr. Mwai for Mr. Munene for 2nd Respondent present

Mr. Gori for Applicant absent

B.N. OLAO

JUDGE

26TH FEBRUARY, 2016