



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**CIVIL CASE NO. 117 OF 2015**

**CHINA ROAD & BRIDGE CORPORATION KENYA .....PLAINTIFF**

**VERSUS**

**1. ECONITE MINING COMPANY LIMITED**

**2. MARY MANYIWA MERI**

**3. BENARD SHUME CHAMUTU**

**4. MERI CHIGAMBA MERI**

**5. JUMA MKALA MWABEJA**

**6. MANYIWA SHUME MANYIWA**

**7. MERI CHAMUTU MERI.....DEFENDANTS**

**RULING**

1. The right to an advocate of one's choice is closely tied to the right to association. Equally, the relationship between an advocate and his client should be looked at through the same lens one looks at the employer-employee relationship. Both should not, in the ordinary course of things, be forced or imposed on an unwilling party.

2. Before me is an application by the firm of Gikera & Vadgama Advocates to be granted leave to cease acting for the 1<sup>st</sup> defendant, a limited liability Company incorporated under the companies Act with two shareholders being:-

**STEPHEN NJOROGE GIKERA - 60%**

**SHEE HAMISI MWAMWINDI - 40%**

3. The application having been filed was, in terms of the courts direction of 24/10/2016, served by registered post to Post Office Box Number 720 – 0621 NAIROBI. Equally to be served was the plaintiffs application to amend the plaint dated 27/7/2016. The affidavit filed by the plaintiff show that it was served upon Gikera & Vadgama Advocates and service acknowledged by a signature against a rubber stamp of the firm. That rubber stamp disclose that the 1<sup>st</sup> defendants' advocates' postal address in

Nairobi is the same address for the 1<sup>st</sup> defendant. It is P.O. Box 720 – 0621 NAIROBI.

4. At the hearing of the application to cease acting MR SHIJENJE who appeared for MR GIKERA & VADGAMA ADVOCATES having said that the application had been served by registered post, said that he was not aware of the directors of the company and could not relate Mr. Gikera the advocate at Gikera & Vadgama advocate and Mr. Gikera the director of the company as shown by the Certificate of Search filed by the plaintiffs in court on 11/11/2016. This court is empowered to make orders to meet the ends of justice and to guard against the abuse of its process.

5. To the court is not a coincidence that the 1<sup>st</sup> defendant share the same office postal address with that of its advocates. I also do not doubt that Ms. Gikera Advocate is the same Ms. Gakera the director of the company. To the court therefore, even though the company is separate and distinct from its directors and shareholders, there is apparently an ignoble plan that an advocate who is a director, and a majority shareholder of the company is seeking to cease acting for the company in which he is the majority on account of allegations that the company has failed to give instructions to the Advocate. I see a plan to delay or derail the just and expeditious disposal of the suit as the only motive behind the application to cease acting.

6. Undue delay defeats justice and cannot be condone. Infact undue and deliberate delay of a court process is what I would consider an abuse of court process. I see through that plaint and decline to bless it, or sanction it. I decide and hold that it would be unjust and an act toward delay to allow the application. The application is thus disallowed and I order that Ms Gikera & Vadgama advocates remain the advocates for the 1<sup>st</sup> defendant until such a time that there shall have been a duly filed notice of change or further orders of this court.

7. I make no orders as to costs.

Dated at Mombasa this **21st** day of **November 2016**.

**HON. P.J.O. OTIENO**

**JUDGE**