



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
LAND AND ENVIRONMENTAL DIVISION
ELC CIVIL SUIT NO. 261 OF 2010

HITEN KUMAR A. RAJA.....PLAINTIFF

VERSUS

GREEN SPAN LIMITED..... 1ST DEFENDANT

ASHOK RUPSHI SHAH.....2ND DEFENDANT

KIRANKUMAR SHAH.....3RD DEFENDANT

DEVCHAND BHAI KHIMASIA.....4TH DEFENDANT

KAPLESH SHAH.....5TH DEFENDANT

RULING

The plaintiff's Notice of Motion application dated 12th October 2012 brought under Order 9 Rule 9, Civil Procedure Rules 2010 sections 1A, 1B 3, 3A and 100 Civil Procedure Act and Articles 47 and 159 of the Constitution inter alia seeks the following orders:-

1. The Honourable court be pleased to allow the firm of **M/S Ombachi, Moriasi & Co. Advocates** to act for the plaintiff in place of **Kwengu & company Advocates**.
2. The Honourable court be pleased to set aside consent order on taxation by **Hon. Gichohi** (Deputy registrar) recorded on 31st July 2012 between **Kwengu & Co. advocates** and **P.J. Kakad & Company Advocates** taxed at Kshs.19,759,403/-.
3. The Honourable court be pleased to set aside all proceedings in this cause done on 30th April 2012 onwards and declare the actions of withdrawal of the entire suit by the plaintiff through his then **M/S Kwengu & Co. Advocates** was withdrawn without instructions.
4. The Honourable court do declare and hold that there was professional misconduct by the firm of **M/S Kwengu & Co. Advocates** in withdrawing the plaintiffs case without instructions and/or reasonable cause.
5. The Honourable court be pleased to order for the reinstatement of the suit for hearing and determination.

6. Costs of this application be provided for.

The plaintiff's application is grounded on the grounds that are set out on the face of the plaintiff's application but principally the application is premised on the ground that the firm of **Kwengu & Co. Advocates** had no instructions from the plaintiff to take over the conduct of the plaintiff's suit from the previous Advocates **M/S S.N. Gikera & Co. Advocates** and that the said firm of **Kwengu & Company Advocates** had no instructions from the plaintiff to withdraw the plaintiff's suit in its entirety which resulted in the plaintiff being adjudged to pay costs to the Defendants which again were consented to by the firm of **Kwengu & Co. Advocates** in the sum of Kshs.19,759,403/-. The plaintiff avers that the firm of **Kwengu & Company Advocates** unprocedurally took over instructions in another matter pending before the premises Rent Tribunal being **BPRT NO. 736 of 2011** between the plaintiff and Crown Industries Ltd purportedly using forged signatures of the plaintiff and the plaintiff alleges the said firm of **Kwengu & Company Advocates** in withdrawing the present case was hitting back to punish the plaintiff. The plaintiff has further sworn an affidavit dated 12th October 2010 in support of the application. In the filed sworn affidavit the plaintiff asserts that he never gave instructions to the firm of **Kwengu & Co. Advocates** to act for him and states that the withdrawal of the suit by the said firm was without his instructions.

The firm of **Kwengu & Co. Advocates** filed grounds of objections/opposition to the plaintiff's application on 2nd November 2012 and **Apell Kwengu Advocate** swore a replying affidavit on the same date which was filed in court on 5th November 2012. **Kwengu Advocate** maintains that the plaintiff instructed him vide a letter dated 30th September 2010 to represent and act for him in this suit and states that he was acting within his authority as agent of the plaintiff when he withdrew the instant suit against the Defendants. **Mr. Kwengu advocate** asserts that he had general and implied authority which would include and extend to compromise the suit provided he acted in good faith. **Mr. Kwengu** insists he acted in good faith and in the best interest of the plaintiff in withdrawing the suit.

Mr. Kwengu Advocates vide his replying affidavit deposes that upon his firm being instructed by the plaintiff vide the plaintiff's letter dated 30th September 2010 to take over the conduct of **ELC NO. 312 of 2009, ELC NO. 261 of 2010, ELC NO. 262 of 2010** and criminal case **NO. 161/132/2010 from M/S S.N. Gikera & Associates Advocates** he filed a Notice of change of Advocate on the same date of 30th September 2010. The record of this suit shows that the firm of **Kwengu & Company Advocates** on 6th October 2010 acting on behalf of the plaintiff filed a Notice of Motion application praying for the following orders:

1. That the Honourable court be pleased to enter judgment against the Defendants for Kshs.32,500,000/- with interest at commercial rates.
2. That the court be pleased to strike out the Defendants defence relating to the other facts of the defence filed herein by the Defendants.
3. The costs of his application be provided for,

This application was supported by the supporting affidavit sworn by **Hiten Kumar Raja** the plaintiff herein on the 6th October 2010.

Kwengu Advocate further in his replying affidavit deposes that in **ELC NO. 312 of 2009, Hiten Kumar Raja & Another –vs- Jacob Juma & 2 others** which his firm took over pursuant to the letter of 30th September 2010 his firm was acting for the plaintiff and had filed an application in regard to which the plaintiff had sworn a supporting affidavit as per annexure "**AK6**" and yet the plaintiff was not protesting that his firm had no instructions to act in the matter. **Kwengu Advocate** contends that the plaintiff is perjuring himself when he deposes that he had not given the law firm of **Kwengu & Company Advocates** instructions to act for him in this suit and points to the bundle of letters and documents annexed and marked "**AK3**" to demonstrate that the plaintiff actually did give instructions to his law firm to represent him. **Mr. Kwengu** deposes that the plaintiff was introduced to him by one **Bryan Yongo** of Neptune Credit Management Limited with whom the plaintiff had previous dealings. **Mr. Bryan Yongo** has sworn an affidavit verifying the fact that he introduced the firm of **Kwengu & Company Advocates**

to the plaintiff who instructed them to act for him. The affidavit is annexed as “AK4” in **Appell Kwengu’s** replying affidavit.

Mr. Kwengu under paragraph 11 of the replying affidavit states that when on 11th November 2011 the Defendants filed an application seeking to have the plaintiff’s suit struck out for being frivolous and vexatious and/or otherwise an abuse of the process of the court he advised the plaintiff who advised him to do what was prudent to do in the circumstances and that **Mr. Kwengu** depones that the law firm opted to withdraw the suit rather than have the same struck out as it was their consideration that in the case of a withdrawal of the suit the plaintiff would have the right to file a fresh suit if he so wished as opposed to the suit being struck out or dismissed which could operate as a bar to bringing a fresh suit on the same facts.

In response to **Appell Kwengu’s** replying affidavit the plaintiff filed a further affidavit sworn on 6th December 2012. In the further affidavit the plaintiff depones that the purported letter dated 30th September 2010 and the supporting affidavit said to have been sworn by the plaintiff on 16th October 2010 (though filed in court on 6th October 2010) were submitted to the director of CID for forensic examination and that the CID’S forensic examiner’s report was that the signatures on the letter and affidavit were not made by the plaintiff.

The plaintiff further denied having requested one **Bryan Yongo** to appoint a lawyer for him to handle the several matters he had. The plaintiff reiterated he never instructed the firm of **Kwengu & Company Advocates** to act for him and denied being aware of the Defendants application dated 28th July 2011 seeking to have the plaintiffs suit dismissed/struck out.

The 2nd Defendant, **Ashok Rupshi Shah** filed a replying affidavit sworn on 5th October 2012 on behalf of himself and the 1st Defendant in opposition to the plaintiff’s application. The 2nd Defendant avers that the plaintiff’s application is misplaced and lacks any substance. The 2nd Defendant denies having had any hand in the withdrawal of the suit of the plaintiff by his Advocates and questions how the plaintiff can feign ignorance of the fact that the firm of **Kwengu & Co. Advocates** was acting for him in the suit. The 2nd Defendant states that various documents were filed in the suit at the behest of the plaintiff as outlined under paragraph 10 of the 2nd Defendant’s replying affidavit. The 2nd Defendant contends that the plaintiff if indeed he had not instructed **Kwengu & Co. Advocates** cannot explain the inactivity for a period of more than 2 years in prosecuting the suit. Is it possible that the plaintiff never bothered to know what was happening in his suit yet he is the one who filed the suit? It is the contention of the 2nd Defendant that the plaintiff has approached the court with unclean hands and cannot be deserving of the discretion of the court. The Applicant for instance has not explained what role if any his previous lawyers **M/S S.N. Gikera & Associates** played over the period of more than 2 years that the firm of **Kwengu & Co. Advocates** allegedly purported to represent him.

The 2nd Defendant further depones that the court lacks the jurisdiction to deal with the consent order/decision of the Deputy Registrar made pursuant to the special powers conferred on the Deputy Registrar under the law and the Civil Procedure Act and the Rules.

The parties filed written submissions to ventilate their respective submissions. The Plaintiff/Applicant filed his submissions dated 19th March 2014 on 20th March 2014. The Defendant/Respondents filed their submissions dated 26th May 2014 on 27th May 2014 and the plaintiff filed submissions in reply on 24th June 2014. The submissions by the parties reiterate the facts of the case as relates to the issue relating to whether or not the firm of **Kwengu & Co. Advocates** had instructions to act for the plaintiff in the suit. The parties have also made submissions on the applicable law and referred the court to various authorities.

Having reviewed and considered the pleadings and the parties submissions, the issues that stand to be determined by the court are:-

1. Whether the firm of Kwengu & Co. Advocates had instructions to act for the plaintiff/Applicant in the matter,
2. Whether the withdrawal of the suit should be set aside and the suit be reinstated for hearing and determination.
3. Whether the certificate of taxed costs should be set aside.

Whether the firm of Kwengu & Company advocates had authority to act for the plaintiff?.

The plaintiff claims he never instructed the firm of **Kwengu & Company Advocates** to act for him and to back his claim he states the letter of 30th September 2010 purporting that he instructed the said firm to take over the conduct of this matter together with other matters was not signed by him and was a forgery. The plaintiff places reliance on the forensic document examination report finding by **John Muinde** a hand writing expert who stated that in his opinion the signature on the letter of 30th September 2010 was not made by the plaintiff. The reference to the forensic expert was made by the plaintiff after the plaintiff had filed the instant application. The opinion of a hand writing expert particularly where such a witness has not been called as a witness and subjected to cross-examination is not conclusive and the court in deciding the issue in regard to which the opinion is rendered would require to evaluate and consider all the attendant and relevant circumstances.

The law permits a party in any suit to be represented by a recognized agent. Order 9 Rule 1 of the Civil Procedure Rules provides:-

9.(1) Any application to or appearance or act in any court required or authorized by the law to be made or done by a party in such court may, except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognized agent or by an advocate duly appointed to act on his behalf.

Where a party is represented by an advocate in a matter he/she has liberty to change his Advocate, without any order of the court except where the change is sought to be made after judgment has been passed in which event an order of the court is required to effectuate the change. Order 9 Rule 5 makes provision for change of Advocate before entry of Judgment while Order 9 rule 9 makes provision for change of Advocate, or when a party seeks to act in person after judgment has been passed.

Order 9 rule 5 provides:-

A party suing or defending by an advocate shall be at liberty to change his advocate in any cause or matter, without an order for that purpose, but unless and until notice of any change of advocate is filed in the court in which such cause or matter is proceeding and served in accordance with rule 6, the former advocate shall, subject to rules 12 and 13 be considered the advocate of the party until the final conclusion of the cause or matter, including any review or appeal.

In the instant suit the firm of **Kwengu & Company Advocates** filed a Notice of change of Advocates on 30th September 2010 to take over the conduct of the matter on behalf of the Plaintiff/Applicant from the firm of **S.N. Kigera & Associates** and soon thereafter the said firm of **Kwengu & Company Advocates** on 6th October 2010 filed a substantive application seeking the following orders:-

- (i) The Honourable court be pleased to enter judgment for the plaintiff against the Defendants for Kshs.32,500,000/- with interest at commercial rates,
- (ii) The Honourable court be pleased to strike out the Defendant's defence relating to the other facts of the defence filed herein by the Defendants.

This application was supported by the annexed affidavit stated to be sworn by the plaintiff on 16th (should be 6th) October 2010 filed in court on 6th October 2010. The affidavit annexes a memorandum of understanding dated 16/11/2007 marked “HKR2” and a further memorandum of understanding dated 26/8/2008 marked “HKR2” and both are signed by the plaintiff and the 2nd-5th Defendants. The plaintiff has denied signing the supporting affidavit but on the face of it the firm of **Kwengu & Company Advocates** could only have gotten the exhibits with the sanction of the plaintiff either from the plaintiff’s previous Advocates or from the plaintiff himself. The plaintiff does not deny the contents of the affidavit and/or the annexures to the affidavit. The plaintiff significantly does not deny having signed the memorandums of understanding annexed to the affidavit.

Upon the plaintiff filing the instant application where the plaintiff essentially denied having instructed the firm of **Kwengu & company Advocates** to represent him, the firm of **Kwengu & Company Advocates** filed grounds of opposition and replying affidavit dated 2nd November 2012 refuting the averments by the plaintiff and additionally the said firm on 8th January 2013 filed an application seeking the leave of the court to be allowed to cross examine the plaintiff (among other people) on the contents of the further Affidavit sworn in support of the plaintiffs Notice of Motion dated 12th October 2012. The court on 23rd May 2013 delivered a ruling granting leave to the firm of **Kwengu & Company Advocates** to cross-examine the plaintiff when the plaintiff’s application dated 12th October 2012 came up for hearing.

Pending the formal hearing of the plaintiff’s application the firm of **Ombachi, Moriasi & Company Advocates** and the firm of **Kwengu & Company Advocates** on 30th October 2013 filed a consent letter in the following terms:-

BY CONSENT

The plaintiff’s application dated 12th October 2012 be and is hereby allowed in part as follows:

1. The firm of **M/S Ombachi, Moriasi and Co. Advocates** be and is hereby allowed to come on record to act for the plaintiff in place of **Kwengu & company Advocates**.

Ombachi, Moriasi & Co. Advocates for the Plaintiff

Kwengu & Company Advocates for the Plaintiff

The Defendants have taken the view that by agreeing to enter the consent, the plaintiff acknowledged the firm of **Kwengu & Co. advocates** were acting with his instructions. The plaintiff’s in part of his submissions states thus:-

“Your Lordship, the plaintiff denies instructing the firm of R/S Kwengu & Company Advocates leading to the filing of this application. The firm of Kwengu & Co. Advocates made an application for leave to cross-examine the applicant herein which was allowed vide the court’s ruling of 23rd May 2013. However on 30th October 2013 by consent of M/S Kwengu & Co. Advocates and M/S Ombachi Moriasi & Company Advocates for the applicant a consent was reached allowing the firm of M/S Ombachi Moriasi & Company Advocates coming on record in place of Kwengu & Co. Advocates. On 5th December 2014 (should have been 2013) the parties herein agreed that with the filing of the consent the issues between the plaintiff and his advocates stand sorted out and what was remaining for determination is the setting aside of the order withdrawing the suit and all consequential orders and the reinstatement of the suit for trial and determination”

Does the plaintiff by this submission insinuate the firm of **Kwengu** had instructions to act for him but had no instructions to withdraw the suit as they did? It is instructive that the firm of **Ombachi Moriasi & Company Advocates** filed their formal Notice of change of Advocate on 30th October 2013 following the recording of the consent and the Notice of change clearly acknowledges they were taking over the conduct of the suit from **Kwengu & Company Advocates**. It is evident from the record that the firm of

Kwengu & Company Advocates attended the court on several occasions for the plaintiff from the time they filed the Notice of change of Advocates on 30th September 2010 as is evident by their attendances before **Hon. Justice Muchelule** for the hearing of the plaintiffs application dated 6th October 2010 whose ruling was delivered on 11th July by 2011 **Hon. Justice Mboghli Msagha** on behalf of **Hon. Justice Muchelule**. During the same period the firm of **Kwengu & Company Advocates** had taken over the conduct on behalf of the plaintiff of Misc. Civil application **NO. 260 of 2011** where the plaintiff had equally taken objection arguing that he had not retained the firm of **Kwengu & Co. Advocates** but the court overruled the objection. The firm of Kwengu & Co. Advocates also during the same period was acting for the plaintiff in **HC ELC NO. 312 of 2009** where they have filed various pleadings as exhibited in the replying affidavit sworn by Appeal **Kwengu** on 2nd November 2012. As in the instant suit those matters were taken over from the firm of M/S S.N. Gikera & Associates Advocates by the firm of Kwengu Advocates to act for the plaintiff.

The plaintiff does not at any time state he had withdrawn instructions from his previous Advocates **M/S S.N. Gikera & Associates Advocates** from the time the said firm filed the present suit meaning that the firm of **S.N. Gikera & Associates Advocates** according to the plaintiff were all the time the Advocates on record for the plaintiff up to the time the firm of M/S **Ombachi Moriasi and Company Advocates** filed their present application on 6th October 2012. The plaintiff filed the present suit on 28th May 2010 and the firm of **P.J. Kakad and Company Advocates** entered appearance for the Defendants on 15th June 2010 and filed their defence on 30th June 2010 merely three (3) months later. The contested Notice of Change of Advocates was filed on 30th September 2010. As observed earlier in this ruling on the face of it the filing of the notice was regular and in compliance with Order 9 Rule 5 of the Civil Procedure Rules. There is no requirement under the rules that a party wishing to change its advocates has to give the incoming advocate instructions in writing. Thus once the Notice of Change of Advocates was filed and served on the opposing party the change of Advocate took effect and the newly appointed Advocates became the recognized agent of the plaintiff and entitled to act for and represent the plaintiff in all further proceedings in the suit. The record shows that **Kwengu & Company Advocates** took over the conduct of the matter on behalf of the plaintiff and both the court and the Advocates for the Defendants accepted that position and dealt with them as such. The firm of **M/S S.N. Gikera & Associates** did not register any protest and it would appear they dutifully released the plaintiff's files to the firm of **Kwengu & Company Advocates**.

Indeed the plaintiff and/or any party who has appointed an advocate has the duty and obligation to follow up with his advocate to ensure that the Advocate is giving effect to his instructions in the conduct of the suit. In the instant case the Defendants were entitled to assume that the firm of **Kwengu & company Advocates** were duly appointed and instructed by the plaintiff. As stated earlier the plaintiff through the new advocates filed a substantive application on 6th October 2010 seeking inter alia summary judgment and the striking out of the Defendants statement of defence which was heard and determined on merits. It is after the dismissal of the plaintiff's said application and after the Defendants filed their application dated 18th November 2011 that sought to strike out the plaintiff's plaint and to have the suit dismissed that the plaintiff's Advocates on record on 30th April 2012 opted to file a Notice of withdrawal of the suit. **Kwengu & Company Advocates** state that they notified the plaintiff of the pendency of the Defendants said application and that it was their considered opinion that it was in the best interest of the plaintiff to have the suit withdrawn rather than face the prospect of the same being struck out and/or dismissed.

Whether or not the firm of **Kwengu & Company Advocates** notified the plaintiff of the action they were taking in regard to the withdrawal of the suit is difficult to tell suffice to say that once an advocate has been instructed by a party such advocate becomes possessed with the ostensible or apparent authority to act and take actions that bind the client without necessarily having to consult with the client and such actions may even include compromising the suit. The respondents Counsel referred the court to the ruling by **Hon. Lady Justice R.N. Nambuye** (as she then was) in the case of **Orbit Chemical Industries Ltd –vs- The Attorney General (HCCC NO. 876 of 2004)** where the learned Judge ably, considered the issue of a counsel's ostensible authority. Lady Justice **Nambuye** referred to the case of:-

Welsh –vs- Roe (1918) LT Rep 118 where the court held that:-

“Where an action has been commenced the Solicitor retained becomes the general agent of the client and has an implied authority to compromise the action and no limitation of such authority can be relied upon by the client as against the other side unless such limitation had been brought to the knowledge of the other side before the compromise was arranged. The onus is upon the plaintiff to show that the authority had been limited and there could be no limitation of that general authority by secret instructions---“.

In the case of **Kenya Commercial Bank Ltd –vs- specialized Engineering Company Ltd (1982) KLR 485 Harris, J (as he then was) held inter alia:-**

(i) A duly instructed advocate has an implied general authority to compromise and settle the action and the client cannot avail himself of any limitation by him of the implied authority to his advocate unless, such limitation was brought to the notice of the other side.

(ii) An Advocate has general authority to compromise on behalf of his client as long as he is acting bonafide and not contrary to express negative direction. In the absence of proof of any express negative direction the order shall be binding.

The plaintiff/Applicant seeks to counter the argument that **Kwengu & Company Advocates** had ostensible and general authority by stating that he never at any time instructed them to act for him or represent him in the suit. The plaintiff relies on the Forensic Expert’s report to assert that he did not give instructions to the firm as alleged. The firm for its part states that it is untrue that the plaintiff did not give them instructions. In the circumstances of this matter and having regard to the attendant circumstances where the plaintiff appear to have had several matters in which the firm of **Kwengu & Company Advocates** became involved on the basis of the contested letter of instructions dated 30th September 2010 I am not prepared to hold the hand writing expert’s opinion as to whether or not the plaintiff signed that letter as conclusive and I will only take it as an expression of an opinion which court not be conclusive. Significantly the conduct of the plaintiff is such that it casts doubts as to the credibility of the plaintiff when he states he did not instruct the firm of **Kwengu & Company Advocates**. Is it possible that the plaintiff after giving instructions to his previous **Advocates S.N. Gikera & Associates Advocates** to file suit he never followed up or bothered to find out what was happening to his suit? I do not think so. Assuming **Kwengu & Company Advocates** were feigning that they had instructions he would certainly have found out from his previous Advocates that they had passed over the matter to his new advocates as per his purported instructions. It is doubtful that the previous Advocates would have handed the plaintiff’s file records to the new firm of lawyers without the plaintiff’s sanction and even if they did it would not have taken the plaintiff nearly two years to discover.

As concerns the Defendants there is no suggestion that they were aware that the firm of **Kwengu & company advocates** had no instructions to act for the plaintiff. Having been served with the Notice of change of Advocates by the said firm they were entitled to take it that the firm of **Kwengu & Company Advocates** had the authority to act for the plaintiff. The Defendants infact resisted the application dated 6th October 2010 brought by the firm of **Kwengu & Company Advocates** and up to 30th April 2012 when the plaintiff filed a Notice of withdrawal of the suit no issue of representation of the plaintiff had arisen. In the premises I see no basis upon which the Defendants can be faulted. The Defendant are entitled to insist upon leaping the benefits of whatever orders they may have obtained in the suit. The Defendants engaged with the firm of **Kwengu & Company Advocates** on the basis that they had the authority to reaping the plaintiff and in the circumstances of this matter the plaintiff would in my view be estopped from denying the said firm had instructions.

In the premises it is therefore my holding that the firm of **Kwengu & Company Advocates** had the authority to act for the plaintiff in this suit and having so held it follows that the said firm had the ostensible and general authority to compromise the suit and thus the notice of withdrawal of the suit dated 30th April 2012 was well within the authority of the said firm to file. There is no basis to set the same aside and I decline to do so.

Having held the firm of **Kwengu and company Advocates** had instructions and authority to act for the plaintiff and that the notice of withdrawal of the suit was properly made it follows that unless fraud, mistake, misrepresentation, collusion, duress and/or undue influence is shown I cannot interfere with the consent order recorded by the parties on the question of costs. The court of Appeal in the case of **WASIKE –VS- WAMBOKO (1976-1985) 1 EA 625** laid the test upon which a consent judgment or order may be set aside when they observed thus:-

“a consent judgment or Order whether final or interlocutory, deliberately made with full knowledge, with the full consent, of the parties or advocates on both sides, is regarded as having a full binding contractual effect on which the other party is perfectly entitled to insist and normally it cannot be set aside or varied, if, however a consent judgment or order is to be set aside or varied, it can really only be set aside or varied on grounds which would justify the setting aside or variation of a contract entered into with the full knowledge of the material matters by legally competent persons, such as fraud, mistake, misrepresentation, collusion, duress, undue influence, agreement contrary to policy of the court, lack of capacity of parties, misapprehension or ignorance of material facts, or if certain conditions remain to be fulfilled which are not carried out, and there is very little distinction between interlocutory orders and final decrees in this respect, in the instant case no valid reasons could be detected on the record for saying that there existed grounds which would justify the setting aside of the judgment as a contract”.

I would in the matter before me applying the test elucidated in the above decision come to the same conclusion that no grounds have been set out which would justify the setting aside the order made by the Deputy Registrar on the taxation by the consent of the parties counsel. The record shows that both counsel appeared before the Deputy Registrar and in fact endorsed the order of taxation of the bill of costs by consent.

An advocate acting for a party is clothed with general authority to represent the client and whatever actions he takes on behalf of the client as long as the same fall within the scope of his authority binds the client. If in taking the action the Advocate acts negligently that cannot affect the validity of the action. In such a situation where an advocate acts negligently to the prejudice of the client, such a client has a separate cause of action against the advocate for negligence and/or professional misconduct. Such action for negligence and/or professional misconduct cannot be properly prosecuted in the same suit where the Advocate represented the client.

Thus having considered the plaintiff/Applicant application and all the material placed before the court in support and opposition of the application, I do not find any merit in the plaintiff’s application dated 12th October 2012 and I order the same dismissed with costs to the Defendants.

Ruling dated, signed and delivered this.....**29TH**.....day of...**January**.....2015.

J. M. MUTUNGI

JUDGE

In the presence:

..... For the Plaintiff

.....For the Plaintiff