

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 559 OF 2010

**NATIONAL COUNCIL OF NON-GOVERNMENTAL ORGANISATION &
OTHERSPLAINTIFFS**

VERSUS

**KITUO CHA SHERIA &
OTHERSDEFENDANTS**

**KEN ONYANGO ANDAR.....INTERESTED
PARTY**

RULING

1. When this matter came up for mention before this court on 29.10.2015, two firms of advocates namely: Mwakio Kirwa & Co. Advocates and K'Bahati & Co. Advocates each stated they had been appointed to appear for the National Council of Non-Governmental Organizations, the 1st Plaintiff herein. This court directed the aforesaid firms to each file their written submissions to guide this court determine which of the law firms should appear for 1st Plaintiff.
2. I have considered the written submissions plus the documents attached to submissions. It can be discerned from the submission that the 1st Plaintiff has for a long time been represented by the firm of Lumumba, Mumma & Kaluma advocate. It would appear that at the beginning of 2015, Thomas K'Bahati , a former partner or associate of the firm of Lumumba Mumma & Kaluma Advocates, left the firm and formed K'Bahati & Co. Advocates.
3. The learned advocate argued that the 1st Plaintiff instructed Him to continue representing it in all the matters he handled for it at the previous law firm. Mr. K'Bahati stated that the firm of Mwakio, Kirwa & Co. Advocates were appointed by officials who are illegally in office and are not recognized under the law hence cannot give any instructions or authority. It is Mr. K'Bahati's submissions that it is only the officials of the 1st Plaintiff who were officials as of 25.11.2010 who can lawfully transact business.
4. This court was therefore beseeched to bar the firm of Mwakio, Kirwa & Co. Advocates from representing the first Plaintiff.
5. Mr. Mwang'ombe learned advocate presented submissions on behalf of the firm of Mwakio, Kirwa and Co. Advocates. He urged this court to find that the aforesaid firm was lawfully appointed to appear for the 1st Plaintiff. The learned advocate submitted documents which showed how the 1st Plaintiff's executive committee members were elected. It was also pointed out that the firm of K'Bahati & Co. Advocates was informed of the decision by the 1st Plaintiff's executive committee members to appoint the firm of Mwakio Kirwa & Co. Advocates to take over the 1st Plaintiff's case in place of the firm of K'Bahati & Co. Advocates.
6. After a careful consideration of the rival submissions, I have come to the following conclusions in the matter. The 1st Plaintiff is a statutory body established in accordance with Section 23 of the N.G.O's coordination Act 1990 (revised in 2012) for purposes of self regulations of all the non-governmental organizations in Kenya. It operates through the executive committee and it is

governed by its rules and regulations to carry on its functions. It is apparent from the documents presented by the firm of Mwakio, Kirwa & Co. Advocates that the current members of the executive committee were elected on 19.4.2014 and on 31.05.2014 by the 1st Plaintiff's membership comprising of all NGO's in Kenya in accordance with the Plaintiff's rules and regulations. Those members were sworn and later gazetted by the cabinet secretary for Devolution and Planning on 15.8.2014 vide gazette notice no. 5616. The aforesaid officials met and passed a resolution to appoint the firm of Mwakio, Kirwa & Co. Advocates to take over this suit in place of the firm of K'Bahati & co. Advocates. The resolution was communicated vide the letter dated 23rd April 2015. The information was passed to the firm of K'Bahati & Co. Advocates. Upon receipt of the information the firm of K'Bahati & CO. Advocates expressed its willingness to relinquish the matter to the firm of Mwakio, Kirwa & Co. Advocates.

7. The firm of Mwakio, Kirwa and Co. Advocates upon receiving a no objection nod, proceeded to file a notice of change of advocates.
8. I cannot comprehend why the firm of K'Bahati & Co. Advocates has now turned around. This court appreciates the fact that advocates have a lien over their client's files if their fees have not been settled. It would appear that is not the case in this matter. It would appear there is a subtle supremacy war between officials of the 1st Plaintiff to create some confusion and scuttle the smooth running of the affairs of the 1st Plaintiff.
9. In the end I am convinced that the firm of Mwakio, Kirwa & Co. Advocates was lawfully appointed to come on record in matter as appearing for the 1st Plaintiff in place of the firm of K'Bahati & Co. Advocates. Consequently, the firm of K'Bahati & Co. Advocates is hereby ordered and directed to cease acting for the 1st Plaintiff since it has been lawfully replaced by the firm of Mwakio, Kirwa & Co. Advocates.

Dated, Signed and delivered in open court this 13th day of November, 2015.

J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

.....for the Defendant