



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**ENVIRONMENTAL AND LAND DIVISION**  
**ELC CIVIL SUIT NO. 1680 OF 1999**

**KARIOBANGI SEWERAGE SELF HELP GROUP..... PLAINTIFF**

**VERSUS**

**NAIROBI CITY COUNCIL.....1<sup>ST</sup> DEFENDANT**

**MERAB ANYANGO POCHE.....2<sup>ND</sup> DEFENDANT**

**KARIOBANGI NORTH LIGHT INDUSTRIES.....3<sup>RD</sup> DEFENDANT**

**JUA KALI ASSOCIATION**

**RULING ON DIRECTIONS**

This matter was first listed before me for hearing on 13<sup>th</sup> November 2012 and on this instance **Mrs. Gulenywa Advocate** appeared for the Plaintiff **Mr. Ringoro** held brief for **Mr. Murugu** for the 1<sup>st</sup> Defendant and **Mr. Mirimo** appeared for the 3<sup>rd</sup> Defendant. The hearing was adjourned on the application of the 1<sup>st</sup> Defendant and the matter fixed for mention on 3<sup>rd</sup> December 2012. On 3<sup>rd</sup> December 2012 **Mr. Nganga Advocate** held brief for **Mrs. Gulenywa** for the plaintiff, **Mr. Murugu Advocate** appeared for the 1<sup>st</sup> Defendant while **Mr. Mirimo Advocate** appeared for the 3<sup>rd</sup> Defendant. The court directed the parties to take a hearing date for the matter at the court registry on a priority basis.

The suit was once again fixed for hearing on 23<sup>rd</sup> July 2013 and on the said date **Mrs. Gulenywa** appeared for the Plaintiff, **MS Mburu Advocate** held brief for **Mr. Rigoro Advocate** for the 1<sup>st</sup> Defendant and **Mr. Mirimo Advocate** appeared for the 3<sup>rd</sup> Defendant. Owing to the absence of **Mr. Rigoro Advocate** the court adjourned the hearing and refixed the hearing of the case on 18<sup>th</sup> and 20<sup>th</sup> November 2013. On 18<sup>th</sup> November 2013, the matter was yet again listed before me for hearing and **MS Gulenywa** was in attendance for the plaintiff but in a surprising twist **Mr. Kanyi Ndurumo Advocate** also attended and stated he was likewise appearing for the plaintiff. The other representations were as in the previous occasions.

The court sought to know who between **MS Gulenywa advocate** and **Mr. Ndurumo advocate** was infact the Advocate representing the plaintiff. **MS Gulenywa** submitted she was the advocate for the plaintiff and that **Mr. Ndurumo** had no locus to appear for the plaintiff as his previous application by way of Notice of Motion dated 5<sup>th</sup> November 2010 seeking orders that:-

- i. The firm of **M/S Gulenywa Jonathan & co Advocates** was improperly on record and had been acting in the matter without instructions from the plaintiffs since the 27<sup>th</sup> September 2007, and
- ii. That the firm of **M/S Kanyi Ndurumo & Co. Advocates** was on 25<sup>th</sup> March 2010 was properly instructed to come on record for the plaintiff,

Was heard and dismissed with costs by **Hon. Lady Justice P.M. Mwilu** on 28<sup>th</sup> June 2012. **Mr. Ndurumo** countered the argument and submitted that the ruling by **Hon. Lady Justice Mwilu** did not bar him from acting for the plaintiffs and besides he submitted his notice of appointment was still on record.

Although the court put off the matter to afford the counsel and their respective clients an opportunity to resolve the issue of representation of the plaintiff the counsel and their clients had not on 15/1/2014 when the matter was fixed for mention not agreed who between the two firms of Advocates was to represent the plaintiff in the matter prompting the court to reserve its ruling on directions as to the representation of the plaintiff for 21/2/2014.

I have perused the court record and it is apparent that the firm of **Gulenywa Jonathan & co. Advocates** has been on record for the plaintiff since sometime in 2007. I have perused the ruling made by **Lady Justice Mwilu** and the submissions made before her. While there is indication that the source of the problem stems from perhaps the existence of two competing groups among the members of the Plaintiff Association it is not within the province of this court at this stage and in these proceedings to determine who between the two groups is the **bonafide** one and/or which group should call the shots in the taking of decisions on behalf of the group.

Parties through counsel presented their arguments before **Hon. Lady Justice Mwilu** and the Judge having considered the arguments and material placed before her made the ruling that she did on 28<sup>th</sup> June 2012. I cannot sit on appeal on the Honourable Judge's ruling. The net effect of **Hon. Lady Justice Mwilu's** ruling is that she did not strike out the appointment of **M/S Gulenywa Jonathan & Co. Advocates** firm as Advocate for the plaintiff and she did not admit the firm of **M/S Kanyi Ndurumo & Co. Advocates** as being properly on record and instructed by the plaintiff. The order dismissing the application of 5<sup>th</sup> November 2010 in my view meant that the firm of **M/S Gulenywa & company Advocates** remained on record for the plaintiff and the firm of **Kanyi Ndurumo** was not admitted on record as they sought to be.

No appeal was preferred against the ruling by **Hon. Lady Justice Mwilu** on the dismissal of the application by her and in the circumstances it is my view that **Mr. Kanyi Ndurumo Advocate** cannot have a Locus in this matter as counsel for the plaintiff as the firm of **Gulenywa & company Advocates** remains the firm on record for the plaintiff. The court as **Hon. Lady Justice Mwilu** observed cannot appoint counsel for parties.

In case the plaintiffs have issues as to who should appoint counsel that is perhaps a matter for them to solve through some other fora. The plaintiff being an association it would be expected that the registered officials and/or members at a duly conveyed general meeting would have capacity to appoint counsel by resolution to forestall situations as the present one where we have two lawfirms each claiming to be mandated to act for the plaintiff.

Until that happens and there is a valid change of Advocates filed the firm of **Gulenywa Jonathan & Company Advocates** shall continue to be the plaintiffs Advocates on record and/ so direct

**Ruling on directions delivered at Nairobi this...21<sup>st</sup> .....day of...February.....2014.**

**J.M. MUTUNGI**

**JUDGE**

**In presence of:**

.....for the Plaintiff

.....for the Defendants