



**REPUBLIC OF KENYA**

**High Court at Bungoma**

**Cause 134 of 2012**

**IN THE MATTER OF THE ESTATE OF PETER BIKETI SIRENGO:::::DECEASED**

**AND**

**STEPHEN SIKUKU BIKETI:::::ADMINISTRATOR/APPLICANT**

**VRS**

**PATRICK WANGILA WANYONYI**

**BRAMWEL ALBA KAKULI:::::RESPONDENTS**

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**RULING**

**Application filed by advocate not on record**

[1] The question raised by Mr. Situma, the advocate for the Respondent, is, whether the application dated 19/3/2013 filed by Mr. Were advocate, before he had filed a notice of appointment of advocates, should be withdrawn or struck out?

[2] Mr. Were admitted that he filed the application but inadvertently did not file appearance and acceptance of appointment. He claimed that was an oversight on their part which should be cured by Article 159 (2) (d) of the Constitution.

**Appointment filed later on**

[3] I have perused the file and observe that an Entry of Appearance and Notice of Appointment of Advocate were duly filed on 5/4/2013, albeit after the application dated 19/3/2013 had been filed. I also observe that those documents were signed by Were advocate, and particularly the Notice of Appointment of advocate was signed by his client, on 19/3/2013. The application in question was also signed on 19/3/2013.

**Article 159 (2) (d) of the Constitution**

[4] Although Article 159 (2) (d) of the Constitution was not designed to aid careless mistakes of parties, the oversight herein was committed by the advocate. And, it will be unfair to visit it upon his client. This is a matter which the court should excuse in favour of substantial justice. After all, Mr. Were filed the papers and is properly on record as the advocate for the his client.

**Order**

[5] For those reasons I will not strike out the application dated 19/3/2013. Parties are, however, advised to take further steps to progress this matter.

**Dated, signed and delivered in open court at Bungoma this 14th day of May, 2013**

**F. GIKONYO**

**JUDGE**

**In the presence of:**

Khisa Court Assistant

Situma for Petitioner/Applicant

Juma for Were for Respondent

**COURT:** Ruling delivered in open court.

**F. GIKONYO**

**JUDGE**