



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ELC. CASE NO. 37 OF 2013

THOMAS M. MULWA 1ST PLAINTIFF

JANET N. MULWA..... 2ND PLAINTIFF

**(Both suing as the Administrators of the Estate
of the LATE PETER MULWA KITHUSI)**

VERSUS

NDULU NDUVU MUASYA1ST DEFENDANT

MUTILE KIIO2ND DEFENDANT

MBATHA JOEL3RD DEFENDANT

MUTUA JOEL4TH DEFENDANT

MARTHA NZIOKA ALIAS KINYELELE5TH DEFENDANT

KASEE MUASYA6TH DEFENDANT

MUTHIANI KIIO7TH DEFENDANT

KIOKO MUTUA8TH DEFENDANT

PETER KIOKO9TH DEFENDANT

NZISA JOEL10TH DEFENDANT

KIMANI KIIO11TH DEFENDANT

NDUVA MAKAU12TH DEFENDANT

MASAI MUASYA13TH DEFENDANT

NDUNGWA KAMENDE14TH DEFENDANT

MUTHAMA KAMENDE15TH DEFENDANT
MSASILA MUSYIMI16TH DEFENDANT
ANTONY MASILIA17TH DEFENDANT
MUSYIMI MASILIA18th DEFENDANT
KATUNGE NDUVU MAKAU.....19th DEFENDANT

RULING

On 24th March 2013, Ms. Janet N. Mulwa appearing for the Plaintiff/Applicants and Mr. Odawa appearing for the Defendants/Respondents appeared before me to prosecute the application dated 1/10/12. Before they could commence to make their submissions on that application, Mr. Odawa raised his objection to Ms. Janet Mulwa prosecuting the application on the grounds that she was the 2nd Plaintiff in this matter and she had already appointed Nzilani Muteti & Company Advocates to act on her behalf. Mr. Odawa further maintained that though she was an advocate, Ms. Janet Mulwa could not represent herself in this matter as she had not filed and served a Notice to act in person.

On her part, Ms. Janet Mulwa maintained that as she is an advocate, she can represent herself, that her advocate Nzilani Muteti was in Machakos and not able to attend to this matter and that this would not embarrass any of the parties.

On this issue, the instructive provision of the law is Order 9 Rule 8 (1) which provides as follows:-

“Where a party, after having sued or defended by an advocate, intends to act in person in the cause of matter, he shall give a notice stating his intention to act in person and giving an address for service.”

I consider that the law is very clear on this point. The suit was filed by Ms. Janet N. Mulwa. However, she and her co-plaintiff instructed the law firm of M/S Nzilani Muteti & Company advocates to act for her and indeed, a Notice of Change of Advocates dated 1/10/12 to this effect was filed in Court on 18/10/12.

It is quite clear that since then, Ms. Janet N. Mulwa does not have a right to act on her own behalf and cannot hold the brief of her Advocate. Having failed to file a Notice of Intention to Act in Person as required by the law cited above, Ms. Janet N. Mulwa cannot act in person.

It is so ordered.

SIGNED AND DELIVERED AT NAIROBI

ON THE 28TH DAY OF JUNE 2013.

MARY M. GITUMBI

JUDGE