



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
ENVIRONMENT & LAND DIVISION
ELC NO. 653 OF 2011

THE SALESIANS OF DON BOSCO

REGISTERED TRUSTEES KENYA PLAINTIFFS

VERSUS

DAGORETI YOUTH CENTRE LIMITEDDEFENDANT

RULING

In this matter two firms of Advocates purport to represent the defendant Dagoretti Youth Centre Limited. On the one part there is the firm of M/s Achoki & Associates Advocates that filed a Notice of change of Advocates dated 3rd January, 2013 to take over the conduct of the suit on behalf of the Defendants from the Firm of Ameyo Guto & Company Advocates who had hitherto represented the Defendant. Upon the Firm of Achoki & Associates Advocates coming on record they together with the Firm of Njuguna & Partners Advocates acting for the plaintiff executed a consent dated 10th January, 2013 and which was filed in court on 11th January, 2013. The filed consent was in the following terms:-

“By consent;

- a. ***The plaintiff’s application dated 19th December 2011 be allowed as prayed.***
- b. ***That the defendant do vacate the suit premises within seven days of the date of filing this consent and default they be evicted forthwith. In such event the defendant do bear the costs of such eviction.***
- c. ***The costs of the application be in the cause.***

On 16th January, 2013 Mr. Njuguna Advocate for the plaintiff and Mr. Achoki for the defendant appeared before me and confirmed the terms of the consent which the court duly approved and adopted as the orders of the court.

On 30th April, 2013 the Law Firm of Ameyo Guto, Etole & Company Advocates filed an application under certificate of urgency seeking to review the consent order filed in court and to set aside the orders issued pursuant to that consent. That application was fixed for hearing on 14th May, 2013 when Mr. Achoki Advocate and Mr. Munoko Advocate who previously had acted for the defendant before Mr. Achoki Advocate came on record both appeared in court with each of them claiming to act for and represent the Defendant.

The court in the face of this double representation directed that the issue of representation of the defendant be sorted out and directed the respective counsel to file submission on the question of their respective authority to act for the Defendant.

Mr. Achoki Advocate in response to the application to vary the consent and set aside the consequent orders has filed a replying affidavit sworn on 9th May, 2013 where he depones that he filed the notice of change on the instructions of the Defendant through its director Michael Kiogora Kihara.

In a letter dated 3rd January, 2013 the firm of Achoki & Associates Advocates informed the Firm of Ameyo Guto & Company Advocates that they had been retained by Michael Kiogora Kihara, director of that defendant company to represent them in the suit and request for the handover of the file unless there was any valid objection to do so. Mr. Michael Kiogora Kihara has sworn an affidavit dated 9th May, 2013. Where he depones the is a director of the Defendant company and that he on 3rd January, 2012 (should have been 2013) instructed the firm of Achoki & Associates Advocates to come on record for the Defendant in place of Ameyo Guto & Co. Advocates. He states the firm of Ameyo, Guto and Etole & Company Advocates are acting without instructions from the defendant and the Notice of change of Advocates filed by the said firm on 30th April, 2013 was without instructions.

As per the letter from the Assistant Registrar of Companies dated 5th February, 2013 to M/s Ameyo Guto Etole Advocates the directors/Shareholders of the Defendant are as follows:-

Muscort Davy Musiega

Michael Kiogora Kichava

From the affidavit of Francis Etole sworn in support of the application dated 30th April, 2013 he confirms that Muscort Davy Musiega is deceased and no personal representative has been appointed to represent his estate. In the absence of grant of letters of administration to the estate of her deceased husband, the wife of Muscort Davy Musiega would have no legal basis to give instructions on behalf of the Defendant Company. While it is alleged Mr. Michael Kiogora Kihara was paid off for his shares in the defendant company no evidence has been tendered and he denies having been paid off. In the premises the record from the Registrar of Companies Prima facie shows what the current directorship and/or shareholders of the defendant is like at the moment.

Having reviewed the file record and all the documents and pleadings that have been filed by the parties I have come to the conclusion that the Notice of Change of Advocate filed by the firm of Ameyo Guto, Etole & Company Advocates was filed without the authority and/or instructions of the Defendant and I accordingly strike the same out and consequently the Notice of Motion dated 30th April, 2013 and the further Notice of Motion filed by the said firm of Advocates purportedly on behalf of the Defendant are hereby struck out. I further hold that the firm of Achoki & Associates Advocates are properly on record for the defendant having been instructed by a director of the Defendant to act in the matter.

Given the circumstances of this matter I will make no order as to costs respecting the two applications struck out.

Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 31ST DAY OF JULY 2013.

J. M. MUTUNGI

JUDGE

In the presence of:

..... for the Plaintiffs

..... for the Defendant