



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
JUDICIAL REVIEW DIVISION
JR CASE NO. 1350 OF 2003

REPUBLICAPPLICANT

VERSUS

COUNTY COUNCIL OF NAROK.....1ST RESPONDENT

PERMANENT SECRETARY, MINISTRY

OF LOCAL GOVERNMENT.....2ND RESPONDENT

DISTRICT LANDS REGISTRAR

NAROK DISTRICT3RD RESPONDENT

Ex-parte

WILDLIFE LODGES LIMITED

RULING

There are two applications to be considered in this ruling. The first application is the notice of motion dated 17th October, 2013 which is brought under sections 1A, 1B and 3A of the Civil Procedure Act (Cap 21). In this application the firm of Momanyi and Associates prays for the striking out of the Notice of Change of Advocates dated 11th July, 2013 and filed on the same date by the firm of Messrs Kemboy & Company Advocates. The Applicant also prays that the said firm of Messrs Kemboy and Company Advocates be barred from further acting in the matter or from further representing the 1st Respondent in this matter. The Applicant also prays for the costs of the application. The application is supported by grounds on its face and a supporting affidavit sworn by Mercy Moguse, a partner in the firm of Momanyi and Associates on 17th October, 2013.

In brief the Applicant's case is that judgment was entered in this matter on 25th August, 2010 and the firm of Kemboy and Company Advocates could have only filed the Notice of Change of Advocates with the leave of the Court or the consent of the firm of Momanyi & Associates which was on record for the 1st Respondent as per Order 9 Rule 9 of the Civil Procedure Rules.

The firm of Kemboy and Company Advocates appear not to oppose the logic of this argument save for stating the reasons why the Notice of Change of Advocates was filed.

The second application is dated 22nd October, 2013. This application is brought by the firm of Kemboy and Company Advocates under Order 9 Rules 5, 6, 9 and 10 & Order 51 Rule 1 of the Civil Procedure Rules and Section 1A, 1B and 3A of the Civil Procedure Act. The Applicant asks the Court:

“to order and record that M/s Kemboy and Company Advocates are now on record as Advocates for the 1st Respondent herein in place of the firm of M/s Momanyi & Associates Advocates.”

I will consider the two applications together. For purposes of record the 1st Respondent in these judicial review proceedings is the County Council of Narok. It is not disputed that a consent judgment was entered on 25th August, 2010 and at that time the firm of Momanyi and Associates Advocates was on the record for the 1st Respondent. At the moment there is a pending application by the Interested Party (Wilderness Lodges Limited) seeking to set aside the said judgment. That application has been fixed for hearing on 10th December, 2013.

It is also agreed that at the time the firm of Kemboy and Company Advocates filed the Notice of Change of Advocates on 11th July, 2013 the provisions of Order 9 of the Civil Procedure Rules applicable to change of advocates were not complied with. Order 9 Rule 9 of the Civil Procedure Rules provides that:-

“9. When there is a change of advocate, or when a party decides to act in person having previously engaged an advocate, after judgment has been passed, such change or intention to act in person shall not be effected without an order of the court—

(a) upon an application with notice to all the parties; or

(b) upon a consent filed between the outgoing advocate and the proposed incoming advocate or party intending to act in person as the case may be.”

A reading of the above rule clearly shows that the firm of Kemboy and Company Advocates acted outside the rule when filing the said Notice of Change of Advocates. The application of the firm of Momanyi & Associates therefore succeeds in the terms to be outlined later in this ruling.

Messrs Kemboy & Company Advocates’ application dated 22nd October, 2013 appears to have been meant to counter Messrs Momanyi and Associates’ application dated 17th October, 2013. The affidavit sworn in support of the said application was sworn on 22nd October, 2013 by the one Stella Chepkoech Langat who introduced herself as the Acting County Secretary of Narok County Government. Narok County Government, after the 2013 General Elections, took over the responsibilities of the defunct County Council of Narok/1st Respondent. From the said affidavit it is clear that the 1st Respondent has withdrawn instructions from the firm of Momanyi and Associates Advocates and instructed the firm of Messrs Kemboy and Company Advocates to take over this matter. There is therefore no doubt as to which firm of advocates the 1st Respondent wants to represent it in this matter. The 1st Respondent has a right to representation by an advocate of its choice. The application by Messrs Kemboy and Company Advocates is therefore allowed so that the said firm will now formally come on record for the 1st Respondent. Every advocate is entitled to his/her fees for work done. The firm of Messrs Momanyi & Associates Advocates is entitled to move, in the manner provided by the law, against the 1st Respondent and recover its fees.

Having allowed the two applications, I issue orders as follows:

1. The Notice of Change of Advocates dated 11th July, 2013 and filed on the same date by the firm of Messrs Kemboy & Company Advocates is struck out;
2. The firm of Messrs Kemboy & Company Advocates is allowed to come on record for the 1st Respondent; and

3. Each firm of advocates will bear own costs in respect of each one of the two applications.

Dated, signed and delivered at Nairobi this 27th day of November , 2013

W. K. KORIR,

JUDGE OF THE COURT