



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI LAW COURTS)
CIVIL CASE 1680 OF 1999

KARIOBANGI SEWAGE FARMERS SELF HELP GROUP.....
PLAINTIFF

VERSUS

NAIROBI CITY COUNCIL.....1ST
DEFENDANT

MERAB ANYANGO POCHE.....2ND
DEFENDANT

KARIOBANGI NORTH LIGHT INDUSTRIES

JUA KALI ASSOCIATION.....3RD
DEFENDANT

RULING

1. The Notice of Motion dated 5th November, 2010 and filed in court on 9th November 2010 is stated to be brought under the provisions of **Order L Rules 1,3 & 15** and **Order III Rule 1** of the Civil Procedure Rules and Sections 3 & 3A of the Civil Procedure Act. That Application prays for orders that;

“1. **THAT** for reasons for urgency service of this application be dispensed with in the first instance and the application be heard ex parte and then the application be served for hearing inter parties.

2. **THAT** this Honourable court be pleased to determine and direct that the firm of M/s Gulenywa Jonathan & Co Advocates is improperly on record in this matter and has since 27th September, 2007 been acting without instructions from the Applicants.

3. **THAT** the Applicants' Advocate on record is M/s Kanyi Ndurumo & Co Advocates who on 25th March, 2010 was properly instructed to come on record for the Applicant.

4. **THAT** costs of this application be paid for by ALICE GULENYWA (Mrs) of Gulenywa Jonathan & Co Advocates.”

2. Three grounds were advanced in support of the Motion, that the originating Summons was filed for the Applicant on 25/9/1999 by a different firm of advocates and the present firm of advocates on record being Kanyi Ndurumo & Company Advocates were instructed to take over on 25/3/2010 and finally that the persons named in the Originating Summons have not instructed M/s Gulenywa Jonathan & Co Advocates to act for them. The Affidavit in support of the application was sworn by one Peter Mwangi Kangwara.

3. A Replying Affidavit opposing the Application was sworn by one Isaac Abdi Adan. I heard submissions from both counsel herein in support of their opposing positions.

It is noteworthy that the Applicant named in the Originating Summons is an association and not one individual and therefore whoever purports to speak for the organization must of necessity show the authority he exercises. The person who swore the affidavit in support of the application said that it was he who was named in the Originating Summons. The one swearing the affidavit in opposition to the application said that he was an official of the Association that is the Applicant and produced the certificate of registration. However, those are really side issues for me. The matter for my determination is whether or not I should strike out one firm of advocates from representing the Applicant. Firstly, the provisions of the law cited pursuant to which the Application is brought do not donate to this court any power to do that which is sought. Secondly and equally importantly I do not see it as the business of the court to appoint advocates for parties. That is not in the court's province. To ask the court to strike out from record one firm of advocates and substitute in its place another firm of advocates is to stretch the powers of the court under Sections 3 & 3A of the Civil Procedure Act to limits not allowable in law. To do that would be to interfere with an individual's/organization's sole right to appoint an advocate of his/its choice. That this court refuses to do.

In the premises the application under consideration is found to be totally devoid of merit and it is hereby dismissed with costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 28TH DAY OF JUNE 2012.

P.M. MWILU
JUDGE

In the presence of:-

.....Advocate for Applicant

.....Advocate for Respondent

.....Court Clerk

P.M. MWILU
JUDGE