



REPUBLIC OF KENYA



KENYA LAW
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**Shah v Mbugua & 32 others (Civil Suit 215B of 2018)
[2022] KEELC 3892 (KLR) (21 July 2022) (Ruling)**

Neutral citation: [2022] KEELC 3892 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
CIVIL SUIT 215B OF 2018
M SILA, J
JULY 21, 2022
(FORMERLY MOMBASA HCCC NO. 622 OF 2011)**

BETWEEN

NAINESH KANTILAL SHAH PLAINTIFF

AND

BIDAN MBUGUA & 32 OTHERS DEFENDANT

RULING

(Application to set aside judgment; application filed through counsel who is not on record and without compliance with order 9 rule 9, which requires counsel to first seek leave before coming on record after judgment, or file a consent with the outgoing counsel; application filed by a stranger and struck out)

1. The application before me is that dated August 27, 2021 filed by the defendants through the law firm of M/s Mwaniki Gitau & Company Advocates. The application seeks orders that the interlocutory judgment entered on April 11, 2012, and the final judgment delivered on March 28, 2019, and all consequential orders be set aside. The application is based on grounds *inter alia* that there was no service of summons and that subsequent notices were erroneously served upon the law firm of M/s Gikandi & Company Advocates who were not on record for them. The application is opposed.
2. Among the issues raised in opposing the motion is that there is no compliance with order 9 rule 9 of the *Civil Procedure Rules*, 2010, on the coming of counsel on record after judgment. That provision requires an incoming advocate to either seek consent of the outgoing advocate or file an application with notice to all parties before coming on record after judgment.
3. In replying to this aspect of the matter, the applicants contend that they never appointed M/s Gikandi & Company Advocates. In response, the plaintiff has annexed a Memorandum of Appearance dated February 28, 2012. I also note that in the judgment sought to be set aside, there is recorded that there is a Memorandum of Appearance that is dated February 28, 2012 and filed on March 1, 2012. My perusal



of the file has not revealed to me this Memorandum of Appearance, but Omollo J must have seen it, for she did make a record of it as I have demonstrated above.

4. I have mentioned earlier that the application herein has been filed by the law firm of M/s Mwaniki Gitau & Company Advocates. None of the prayers in that application seek that the law firm of M/s Mwaniki Gitau & Company Advocates should be granted leave to come on record in place of M/s Gikandi & Company Advocates. There is no mention in that application of order 9 rule 9 of the Civil Procedure Rules, 2010. I have already stated that the court (Omollo J) saw the Memorandum of Appearance filed by M/s Gikandi & Company Advocates when she was writing the judgment. If the position of the defendants is that Gikandi & Company Advocates filed appearance without being instructed, that would be another matter, and indeed can only be addressed after an opportunity has been given to M/s Gikandi & Company Advocates to comment on whether or not the law firm of M/s Mwaniki Gitau & Company Advocates should be granted leave to come on record. There can be no escaping compliance with order 9 rule 9. Without first coming properly on record, the law firm of M/s Mwaniki Gitau & Company Advocates cannot purport to file documents on behalf of the defendants. The issue of representation has consistently been raised by Mr Njoroge, learned counsel for the plaintiff, but for reasons I cannot fathom, Mr Mwaniki, who filed the application, opted to take it casually.
5. I find that the application herein has been filed by a stranger and there is no need of going to the merits of it. There must first be compliance with order 9 rule 9 of the Civil Procedure Rules.
6. I proceed to strike out this application with costs to the plaintiff.
7. Orders accordingly.

DATED AND DELIVERED THIS 21 DAY OF JULY 2022

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT MOMBASA

