



**Kencent Holdings Limited & another v Matsere & 330 others (Civil Suit 123 of 2009) [2022] KEELC 3746 (KLR) (14 July 2022) (Ruling)**

Neutral citation: [2022] KEELC 3746 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
CIVIL SUIT 123 OF 2009**

**M SILA, J  
JULY 14, 2022**

**BETWEEN**

**KENCENT HOLDINGS LIMITED ..... 1<sup>ST</sup> PLAINTIFF**

**KENYA NATIONAL ASSURANCE (2001) LIMITED ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**MATI CHARO MATSERE & 330 OTHERS ..... DEFENDANT**

**RULING**

1. The application before me is that dated December 29, 2021. It seeks the following orders :-
  - (i) Spent (certification of urgency).
  - (ii) That this Honourable Court be pleased to grant leave to the firm of Khaminwa & Khaminwa Advocates to come on record for the defendants/applicants and the Notice of Appointment filed herein be deemed to have been filed and served with leave of the court.
  - (iii) That this Honourable Court be pleased to stay execution of the 2nd plaintiff's/respondent's letter of offer to sell dated December 6, 2021 and any other subsequent letters of offer to sell addressed to all defendants applicants hereinafter referred to as squatters on the suit property described as Plot LR No. 397/MN/(Original No.181 & 187) CR No. 1940 pending the hearing and determination of the application and or until further orders of this Honourable Court.
  - (iv) That the 2nd plaintiff's/ respondent offer to sell dated December 6, 2020 be stayed until orders dated October 31, 2019 are fully complied with.
  - (v) That any other relief the court may deem fit to grant.
  - (vi) That costs be provided for.



2. The application is based on various grounds and is opposed.
3. I have deliberately titled this ruling as a “ preliminary ruling” for within this ruling, I have not dwelt with the substance of the application, but only address prayer (2) of the motion, which seeks that the law firm of M/s Khaminwa & Khaminwa be allowed to come on record for the defendants/applicants. This prayer is based upon the provisions of Order 9 Rule 9 of the *Civil Procedure Rules*, which provides as follows :-
  9. Change to be effected by order of court or consent of parties  
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.
4. The applicants have been represented in this matter by the law firm of M/s Mabeya Buti & Company Advocates. Judgment was delivered on October 12, 2011. What we are now dealing with are post judgment applications and it will be observed that within this application is the prayer to change counsel. Before such change can be effected, Order 9 Rule 9 above, provides that the change may either be effected by consent between the outgoing and the incoming advocate, or upon an application with notice to the parties. Among the issues raised in the submissions filed by counsel for the 2<sup>nd</sup> plaintiff, is that the law firm of M/s Mabeya Buti & Company Advocates has conspicuously not been served with this application, contrary to the provisions of the law.
5. I have gone through the application, and indeed, nowhere does it indicate that among those to be served, is the law firm of M/s Mabeya Buti & Company Advocates. It means therefore that there is no notice to the outgoing advocate contrary to what Rule 9 (a) above requires since there is no consent that has been filed between the existing advocate and the proposed incoming advocate.
6. Before I can delve into the merits of the application, there needs to be strict compliance with the provisions of Order 9 Rule 9. I therefore direct that the law firm of M/s Mabeya Buti & Company Advocates first be served with this application. It is only upon being satisfied of service, or if a consent is filed, that I can address myself to prayer (2) of the application. I am unable to canvass the other issues in the application before counsel properly comes on record.
7. The costs of this preliminary ruling is to the respondents.
8. Orders accordingly.

**DATED AND DELIVERED THIS 14 DAY OF JULY 2022.**

**JUSTICE MUNYAO SILA**

**JUDGE, ENVIRONMENT AND LAND COURT AT MOMBASA**

