



REPUBLIC OF KENYA



**KENYA LAW**  
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**Muruga v CN- Sued as the Mother and the next Friend of SWK & 2 others (Environment & Land Case 70 of 2017) [2022] KEELC 3901 (KLR) (24 August 2022) (Ruling)**

Neutral citation: [2022] KEELC 3901 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT & LAND CASE 70 OF 2017**

**BM EBOSO, J**

**AUGUST 24, 2022**

**BETWEEN**

**JANE WANJIKU MURUGA ..... PLAINTIFF**

**AND**

**CHRISTINE NJERI- SUED AS THE MOTHER AND THE NEXT FRIEND OF  
SUSAN WAMBUI KAMAU ..... 1<sup>ST</sup> DEFENDANT**

**JOHN MWENDIA KAMAU ..... 2<sup>ND</sup> DEFENDANT**

**STEPHEN NDUATI ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. Judgment in this suit was rendered by Gacheru J on 31/5/2019. The court dismissed the plaintiff's suit. On 12/6/2019, the firm of Muigai, Kemei & Associates filed a notice of change of advocates on behalf of the plaintiff. Subsequently, on 8/7/2019, the plaintiff, through the said firm of advocates, filed a notice of motion dated 5/7/2019, seeking an order of stay of execution pending the hearing and determination of an appeal against the said Judgment in the Court of Appeal. The application is one of the two items that fall for determination in this ruling. Whether or not there is a positive order to be stayed by this Court is one of the questions that may ultimately fall for consideration.
2. The second item that falls for determination in this ruling is the defendants' preliminary objection dated 22/7/2019, through which the defendants invited the court to strike out the application dated 5/7/2019 on the ground that it contravenes the provisions of Order 9 rule 9 of the Civil Procedure Rules. Both the preliminary objection and the application were canvassed through written submissions. The plaintiff's written submissions are dated 19/8/2019 while the defendants' written submissions are dated 9/8/2019.



3. I reported at Thika Environment and Land Court in mid-September 2021. This case was first listed before me on 13/6/2022. Parties filed their written submissions way back in 2019. It is not clear why the preliminary objection and the application were not disposed earlier.
4. Because the preliminary objection seeks the striking out of the plaintiff's application for non-compliance with the requirements of Order 9 rule 9 of the Civil Procedure rules, I will dispose it first.
5. I have considered the parties' rival submissions on the preliminary objection. The gist of the defendants' objection is that, at the time Judgment was rendered in this suit, the plaintiff was represented by the firm of Waithaka Wachira & Company Advocates. The defendants contend that the plaintiff ought to have complied with the requirements of Order 9 rule 9 of the Civil Procedure Rules before filing a notice of change of advocates.
6. Order 9 rules 9 and 10 provide as follows:
  - “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.
  10. An application under rule 9 may be combined with other prayers provided the question of change of advocate or party intending to act in person shall be determined first.”
7. The case of the plaintiff is that Mr Wachira of the firm of Waithaka, Wachira & Company Advocates died prior to delivery of Judgment in this suit. She contends that the firm of Muigai, Kemei, & Associates was instructed prior to delivery of Judgment in the suit and that only the notice of change of advocates was filed post-judgment. She contends that, given the above circumstances, the provisions of Order 9 rule 9 of the Civil Procedure Rules did not apply to this suit.
8. I do not agree with the plaintiff in her contention that the framework in Order 9 rule 9 of the Civil Procedure Rules did not apply to this suit. The framework applied to this suit. This view is informed by the fact that the death of an advocate does not remove a law firm from record. What removes a law firm from record is either a proper notice to act in person or a proper notice of change of advocates.
9. The overarching objective of the above framework is to ensure orderly administration of justice. The framework is couched in mandatory terms. The drafters of the rules anticipated a situation where the law firm on record may not be available or willing to consent to a change of advocates. They provided for the option of seeking and obtaining leave of the court to effect a change of advocates. Indeed, under Order 9 rule 10, the plea for leave of the court can be combined with other prayers in an application.
10. The result is that the defendants' objection dated 22/7/2019 is upheld and the notice of motion dated 5/7/2019 is struck out. The applicant shall be at liberty to bring a proper application, if necessary. The applicant shall bear costs of the application.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 24TH DAY OF AUGUST 2022**



**B M EBOSO**

**JUDGE**

**In the Presence of: -**

**Mr Chasia for the Defendants**

**Court Assistant: Ms Osodo**

