



**Tigris Developers Limited v Kanyotu & 2 others; Kangaita Coffee Estates Limited (Interested Party) (Environment & Land Case E021 of 2021) [2022] KEELC 3899 (KLR) (24 August 2022) (Ruling)**

Neutral citation: [2022] KEELC 3899 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT & LAND CASE E021 OF 2021**

**BM EBOSO, J  
AUGUST 24, 2022**

**BETWEEN**

**TIGRIS DEVELOPERS LIMITED ..... PLAINTIFF**

**AND**

**WILLY KIHARA NJOKI KANYOTU ..... 1<sup>ST</sup> DEFENDANT**

**SURESHCHANDRA RAICHAND SHAH ..... 2<sup>ND</sup> DEFENDANT**

**TOPAZ INVESTMENTS LIMITED ..... 3<sup>RD</sup> DEFENDANT**

**AND**

**KANGAITA COFFEE ESTATES LIMITED ..... INTERESTED PARTY**

**RULING**

1. On December 6, 2021, this court ordered the plaintiff to extract and serve on all the defendants summonses to enter appearance in this suit. The summonses were to be served within 15 days from the date of the order [excluding the period expressly excluded by the *Civil Procedure Rules*]. In default of compliance, the suit was to stand dismissed. It subsequently emerged that the plaintiff did not comply with the court order and therefore the suit stood dismissed. On February 21, 2022, the suit was marked as dismissed for non-compliance with the above order.
2. On February 23, 2022, the plaintiff, through M/s Musa Boaz & Thomas Advocates brought a notice of motion dated February 22, 2022, seeking reinstatement of the suit. The said notice of motion is one of the two items that fall for determination in this ruling.
3. The second item is the 2nd and 3rd defendants' preliminary objection inviting the court to strike out the application dated February 22, 2022 on the ground that it contravenes the mandatory requirements



of order 9 rules 9 and 10 of the Civil Procedure Rules. Because the preliminary objection seeks an order striking out the application dated February 22, 2022, it will be disposed first.

4. The preliminary objection was canvassed through written submissions dated April 21, 2022, filed by M/s Macharia Mwangi & Njeru Advocates. The plaintiff opposed the preliminary objection through written submissions dated March 28, 2022, filed through M/s Musa Boaz & Thomas Advocates. I have considered the rival submissions.

5. The gist of the preliminary objection is that the application dated February 22, 2022 was filed by a firm of advocates that was not properly on record, hence it is incompetent and an abuse of the court process. The objectors contend that this suit having been dismissed upon expiry of the period prescribed in the court order of December 6, 2021, the firm of Boaz Musa & Thomas Advocates ought to have complied with the requirements of order 9 rules 9 and 10 of the Civil Procedure Rules. Order 9 rules 9 and 10 of the Civil Procedure Rules 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.”

6. It is the case of the objectors that order 9 rule 9 is couched in mandatory terms, and that failure to comply with the requirements in order 9 rule 9 rendered the application fatally defective. On its part, the plaintiff contends that order 9 rule 9 of the Civil Procedure Rules is merely intended to protect outgoing advocates by ensuring that their legal fees is catered for.

7. In my view, besides protecting advocates against unscrupulous litigants who would want to effect changes in legal representation without discharging their obligations to pay legal fees to the previous advocates, the overarching objective of the above framework is to ensure an orderly administration of justice. The framework is indeed couched in mandatory terms. A party seeking to effect a change of advocates after the case has been concluded is obligated to comply with the requirements of order 9 rule 9 of the Civil Procedure Rules.

8. No satisfactory explanation has been tendered to justify the plaintiff's non-compliance at the time of bringing the application. Order 9 rule 10 gave the plaintiff the option to make a prayer in the same application, for leave to effect change of advocates in the event that they were unable to procure consent of their previous advocates. It is clear from the face of the application that the option was not utilized.

9. The result is that the preliminary objection dated March 10, 2022 is upheld and the notice of motion dated February 22, 2022 is struck out. The plaintiff shall bear costs of the application and the preliminary objection.

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

**BM EBOSO**

**JUDGE**



**In the Presence of:-**

**Mr Mathenge for the plaintiff.**

**Mr Kinamni for the 2nd and 3rd defendants.**

**Mr Ruiru for he 1st defendant and holding brief for Mrs Akedi for the interested party.**

**Court Assistant: Ms Osodo.**

