



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT BUNGOMA**

**Miscellaneous Application 101 of 2008**

**REPUBLIC.....APPLICANT**  
**VERSUS**  
**THE CHAIRMAN, KANDUYI DISPUTES TRIBUNAL....RESPONDENT**  
**VERSUS**  
**BEN WANYAMA TABANI.....APPLICANT**  
**VERSUS**  
**NASHION W. NABIBIA.....INTERESTED PARTY**

**RULING**

This is a ruling on a notice of preliminary objection dated 7<sup>th</sup> May 2010 raised by Mr. Situma the counsel for the Ex-parte Applicant herein. It seeks to challenge the mode of coming on record for the legal representation of the Interested Party by the firm of Omundi Bw' Onchiri & Co. Advocates for non-compliance with Order III Rule 6 of the Criminal Procedure Rules.

The facts leading to the notice are that the firm of J. O. Makali & Company filed a notice of appointment of advocates to represent the Interested Party on the 3<sup>rd</sup> July 2008 which notice is dated 2<sup>nd</sup> July 2008. On 3<sup>rd</sup> May 2010 another notice of appointment dated 29<sup>th</sup> April 2010 was filed by Omundi Bw' Onchiri as advocates of the Interested Party.

Mr. Situma submitted that Order III, Rule 6 does not call for filing of several notices of appointment by different advocates to represent one party. It provides that a new advocate should file a notice of change of advocates. On the other hand, Mr. Onchiri opposed the objection arguing that he was in order to file the notice of appointment even though the firm of J. O. Makali was still on record. According to him, a party may be represented by more than one advocate.

The provisions of Order III, Rule 6 provides:

***“A party suing or defending by an advocate shall be at liberty to change his advocate in any cause or matter without an order for that purpose, but unless and until notice of any change is filed in court in which such cause or matter is proceeding and served in accordance with Rule 7, the former advocate shall,***

***subject to rules 11 and 12, be considered the advocate of the party until the final conclusion of the cause or the matter, including any review or appeal.”***

In the matter before me, there was another advocate on record and the correct thing to do for another advocate coming on record was to file a notice of change of advocates. Messrs Omundi Bw’ Onchiri ought to have filed and served a notice of change in accordance with the provisions of the law. Mr. Onchiri argued that a party can be represented by as many advocates as possible. The number of advocates in a case is not a problem but they must come on record in compliance with the laid down procedure. It also has to be clear to the court that the two or three advocates are appearing alongside each other. Filing a notice of appointment one after another will throw the court and the parties into confusion.

I was referred to the case of **JUMA OPETU & ANOTHER –VRS- A.G. & 3 OTHERS KAKAMEGA HIGH COURT CIVIL CASE NO.220 OF 1995** where Justice G.B.M Kariuki was confronted with a similar situation. He found that the advocate who filed a notice of appointment after the first advocate was not properly on record. I entirely agree and associate myself with the findings of my brother Judge.

It is my finding that the firm of Omundi BW’ Onchiri is not properly on record for failure to comply with the law. I strike out their notice of appointment and grounds of objection filed on 3/5/2010 with costs to the Ex-parte Applicant. The firm of J. O. Makali remains on record for the Interested Party.

**F. N. MUCHEMI  
JUDGE**

Ruling dated and delivered on the 12<sup>th</sup> day of May, 2010 in the presence of Mr. Situma for the Applicant and Mr. Onchiri for the Interested Party.

**F. N. MUCHEMI  
JUDGE**