



REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI  
MILIMANI LAW COURTS  
Civil Case 983 of 1996

JOHN MUTURI KARIUKI.....1<sup>ST</sup> PLAINTIFF/RESPONDENT

MWANGI THUO .....2<sup>ND</sup> PLAINTIFF/RESPONDENT

JULIUS GITAU KARIUKI.....3<sup>RD</sup> PLAINTIFF/RESPONDENT

IVAN WAINAINA.....4<sup>TH</sup> PLAINTIFF/RESPONDENT

VERSUS

MONICA NYOKABI KARAI.....1<sup>ST</sup> DEFENDANT/APPLICANT

KABIRI WANGUNYU.....2<sup>ND</sup> DEFENDANT/APPLICANT

MUNGAI S/o NGANGA.....3<sup>RD</sup> DEFENDANT/APPLICANT

NDUNGU KARARI.....4<sup>TH</sup> DEFENDANT/APPLICANT

CHIEF LAND REGISTRAR.....5<sup>TH</sup> DEFENDANT/APPLICANT

RULING

This is an application by way of Notice of Motion under Order XLIV Rule 1(i)(a)(2) and Order L Rule 1 of the Civil Procedure Rules that there be a stay of execution of this court's ruling of 11<sup>th</sup> December, 2009 and that the said ruling be varied or set aside.

The other order is that the firm of Betty Rashid and Company Advocates be allowed to come onto record after judgment. The grounds upon which the application is premised are set out in the application in addition to an affidavit sworn by Dominic Thagishu Karari said to be the personal representative of the 1<sup>st</sup> and 4<sup>th</sup> defendants.

For the firm of Betty Rashid and Company Advocates to come onto record, an application must be made under Order III Rule 9A of the Civil Procedure Rules which reads as follows;

**9A. " 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 upon an application with notice to the advocate on record."**

The present application has been signed by Betty Rashid and Company who have also been said to have drawn the same. The first order sought is for leave to be granted to the said firm of advocates to come on record after judgment. Clearly, the application was drawn and filed before such leave was granted. I also note that no application to that effect has been made in compliance with the said rule because, even the present application has not been served upon the advocates previously on record.

Even the Notice of Motion before me has not cited Order III Rule 9A in which case perhaps, I would have considered my discretion in favour of counsel. What I note is that, the learned counsel who filed this application had in mind the said order because, it is mentioned by the said Dominic Thagishu Karari in paragraph 2 of his affidavit. That however, does not aid the advocate. To that extent the application before me is incompetent.

That notwithstanding, I have looked at the material that has been presented and the reply by the respondents. In my said ruling dated 11<sup>th</sup> December, 2009 I said as follows;

**“it is my duty at this stage to uphold the decree and make sure that its execution is in compliance with the judgment of the learned judge.....it is now upon the parties to get together and detail the Provincial Surveyor to comply with the court order and hopefully this matter shall be laid to rest after the said report is filed in court.”**

Instead of complying with the said direction, the applicants have moved this court to stay the execution of the said ruling and or vary or set it aside. With profound respect, going by the history of this case the said orders are intended to delay the completion of this exercise to the prejudice of the parties.

Accordingly, the application is hereby dismissed with costs to the respondents.

Orders accordingly.

*Dated, signed and delivered at Nairobi this 30<sup>th</sup> day of September, 2010.*

**A. MBOGHOLI MSAGHA**  
**JUDGE**