



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)
Civil Case 494 of 2008

1. **BENJOH AMALGAMATED LTD.**
2. **MURI COFFEE ESTATE LTD.PLAINTIFFS**

VERSUS

1. **KENYA COMMERCIAL BANK LTD.**
2. **BIDII KENYA LIMITEDDEFENDANTS**

R U L I N G

Application dated 10.2.09 filed on behalf of second plaintiff seeks stay of taxation proceedings now before Taxing Officer including execution of taxed costs. Secondly, that the court do set aside the order made by the court on 29/9/08. The application is based on the grounds that the Board of Directors of second plaintiff had appointed the firm of Kingara, Advocates to act for them in this case in place of Wachakana & Co. Advocates.

According to the record of 29/9/08 there was chamber summons filed by Wachakana Advocates on behalf of both the plaintiffs. M/S Oraro & Co. Advocates have not been on record in this suit. The plaint together with verifying affidavit was filed by M/S Wakachana Advocates.

On this day the appearances were:

1. Mr. Wachakana for both plaintiffs
2. Mr. Nyachoti for first defendant
3. Mr. Satish Gautama & Mr. Sehmi for second defendant

The proceedings proceeded as indicated in page 9 of proceedings, the

Application was coming for hearing inter partes. Mr. Wachakana addressed the court first and stated:

“I wish to notify the court that the second plaintiff Muiru Coffee Estate Ltd. Wishes to discontinue the suit against both defendants.”

Mr. Gautama said the notice had to be in writing upon which Mr. Wachakana proceeded to write out the notice by long hand and the same was placed in court file. The orders were subsequently made accordingly.

It is now submitted that the said Mr. Wachakana had no instructions to seek such orders and the same were made in;

“Error and the rights of the 2nd plaintiff were trampled on.”

The record shows that on that dated 29/9/08, the advocate on record was M/S Wachakana and there had been no change of advocate filed. The issues of change of advocates in a suit is governed by the provisions of **Civil Procedure Rules, Order 3 Rules 6 and 7.**

It is clear that these provisions were not complied with and therefore the court finds that on that date 29/9/08, the advocate authorized to act and represent the 2nd plaintiff in this case was Mr. Wachakana or his firm. The application has no merit and the same is dismissed with costs to both defendants.

Orders accordingly.

DATED and DELIVERED at Nairobi this 14th day of May 2009.

JOYCE N. KHAMINWA

JUDGE