



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT KERICHO

Civil Suit 39 of 2002

JOSEA KEMEI PLAINTIFF

VERSUS

KITUR ARAP MUREI alias ERNEST KITUR MURBI 1ST DEFENDANT

JOEL KIBIRGEN CHERUIYOT2ND DEFENDANT

RULING

I: Civil Practice & Procedure

1. By an application dated 12th March, 2009 and filed on 13th March, 2009, M/S Chelule & Co. advocates pray to be granted leave by this court to come on record in place of M/S Karigo Thuo & Co. advocates. They ask to file a notice of change to this effect.
2. The application has been brought under **Order III r 9A , Order XL VIII 591) (b) (11) and Order L rule 1** of the Civil Procedure Rules.

II: Background

3. Defendant No.2 had sued the plaintiff in Kericho PMCC. 466/93 later Kericho HCC.70/96 for orders of eviction from the suit land. This suit was finalized and judgment delivered by Ondeyo J on the 3rd May, 2002 in favour of defendant No. 2.
4. The plaintiff filed this court suit HCCC. 39/04. It was heard on adverse possession and was fully determined on 31st January, 2008 (Kimaru J) who dismissed the suit in favour of defendant No.1 and 2.
5. During the subsistence of the latter suit the advocate for the defendant M/S Karigo Thuo & Co. advocates was given leave by court (*Apondi J*) to cease acting for the 1st defendant (27.9.04). A party and party cost was filed against the 1st defendant by the former advocate on 24th June, 2008 for a sum of Ksh. 210,343/=.
6. (*This taxation is done after the finalization of a suit and is correctly applied for. I would now state that it had come to my knowledge in dealing with the other cases that the said advocate has since passed away*).

III: Application notice of motion 12th March, 2009

7. M/S Chelule & Co. advocate wish to now come on record after judgment to represent the 2nd defendant in place of M/S Karigo Thuo & Co. advoates.
8. They bring the application under **Order III r 9(a)** Civil Procedure Rules **Order IX VIII 5(1) (b) (11)** and **order L r 1** Civil Procedure Rules.
9. No reason is given save that is a mandatory requirement.
10. To counter-act parties acting in a case when it is finalized without formally changing advocates, the rules committee provided that a formal application must, at all times, be made to seek leave to come on record after a suit has been finalized.
11. This is a formality and requirement under Order **III r 9A** Civil Procedure Rules.

IV: Findings

12. The application is duly granted. Leave to come on record by the advocates is hereby given. A notice of change of advocate be filed within seven (7) days of to days date.
13. The costs be in the cause.

DATED this 14th day of May, 2009 at **KERICHO**

M.A. ANG'AWA

JUDGE

Advocates

A.C. Cherono advocate instructed by M/S Chelule & Co. advocates – incoming advocates for the
2nd defendant/applicant – present

N/A for the Respondents