

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA

Civil Appeal 128 of 2008

AL-AMIN INSURANCE AGENCYAPPELLANT

VERSUS

ABDULGADER SHARIF SWALEH

JAMAL SHARIF SWALEH

OMAR SHARIFF t/a

JINGO TOURS AND SAFARIS.....1ST RESPONDENT

M.A. JAGANI AUCTIONEERS2ND RESPONDENT

RULING

By a notice of motion dated 12th March 2009, the firm of James Gathuku & Co. Advocates applied for the Notice of Appointment of Advocates filed by the firm of Anil Suchak Advocate to be struck out. There is also an alternative prayer seeking for an order directing the 2nd Respondent to deposit a sum of Kshs.164,356/- as Security for costs of the applicant herein. The motion is supported by the affidavit of James Kamanja Gathuku sworn on 17.3.2009.

Anil Suchak Advocate filed the replying affidavit of Mohamed Jaffer Jagani sworn on 9th April 2009 to resist the motion.

There is no doubt that the firm of James Gathuku & Co. Advocates has been appearing for the 2nd Respondent until this court pronounced judgment on appeal on 20.2.2009. Being dissatisfied with this court's decision, Abdulgader shariff Swaleh, Jamal sheriff Swaleh and Omar Shariff t/a. Jingo Tours & Safaris filed a notice of appeal to intimate their intention to appeal in the court of appeal. The Notice of Appeal is dated 2nd March 2009.

On 12th March 2009, Anil Suchak Advocate filed a Notice of Appointment to Act for M.A. Jagani & Sons Ltd, the 2nd Respondent herein with effect from 10th March 2009 . Mr. Gathuku is of the view that this notice was filed contrary to the provisions of Order III rule 9A of the Civil Procedure Rules, hence it should be struck out. A critical look at the provisions of Order III rule 9A of the Civil Procedure Rules will reveal that the law envisaged the filing of a notice to act in person or a notice of change of advocate. The document sought to be struck out is a notice of appointment of Advocate. That notice did not seek to replace the firm of James Gathuku & Co. Advocates. It merely stated that the firm of Anil Suchak Advocate had been appointed to appear for the 2nd Respondent. It is not therefore true that the firm of James Gathuku & Co. Advocates has blocked from accessing the proceeds of the decree. I find no merit in the motion. It is dismissed with no order as to costs.

Dated and delivered at Mombasa this 8th day of June 2009.

J.K. SERGON

J U D G E