



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA  
AT NAKURU  
Civil Case 161 of 2008**

**SAMUEL KINYANJUI KIMEMIA & 13 OTHERS.....PLAINTIFFS**

**VERSUS**

**CHINE ROAD & BRIDGE CORPORATION (K).....DEFENDANT**

**AND**

**RIFT VALLEY DEVELOPMENT TRUST**

**REGISTERED TRUSTEES.....INTERESTED PARTY**

**RULING**

The Interested Party has by its application dated 16<sup>th</sup> September, 2009 sought two main orders: that M/s Kiage & Co. Advocates be granted leave to come on record in place of its erstwhile advocates and that the consent order recorded in this suit on 2<sup>nd</sup> June, 2009, be reviewed and set aside.

Counsel for the respondents raised a preliminary objection on the competence of the application arguing that the first prayer of the application should have been sought in a separate application before seeking the other prayers. I overruled that preliminary objection *ex-tempore* and now wish to give the reasons therefore before I decide the application on its merits.

**Order 3 Rule 9A** of the **Civil Procedure Rules** is meant to protect the interests of counsel who has acted for a party from being denied of his fees when judgment had been obtained. I know of no rule forbidding a prayer for counsel to come on record from being made in an application along with other prayers. What is important is that before hearing arguments on the other prayers, the one seeking leave to come on record should first be determined.

In this case counsel previously on record for the Interested Party have been paid their fees and have admittedly no objection to M/s Kiage & Co Advocates replacing them. It is for these reasons that I overruled the preliminary objection. In the circumstances, M/s Kiage & Co. Advocates are hereby allowed to come on record for the Interested Party in place of M/s Nchogu Omanza & Nyasimi Advocates.

Having disposed of that preliminary issue I now wish to deal with the application on its merits. The

Interested Party's ground for seeking a review of the said consent order is that though it was already a party to this suit, it was conveniently excluded from the negotiations and fruits of that order and yet the order compromises its property rights.

I find no merit in this application for three reasons. One, the Interested Party was enjoined in this suit by an ex-parte order of this court made on 17<sup>th</sup> September, 2008. It was therefore incumbent upon it to notify the other parties in the suit of its joinder by serving on them a copy of that order. There is nothing on record to dispute the other parties' contention that at the time of recording the consent order, they did not know of the Interested Party's joinder. Secondly, the plaintiffs are admittedly the registered proprietors of the pieces of land in respect of which they have been paid compensation. The Interested Party claims that the plaintiff fraudulently obtained title to those pieces of land. It contends that its agent, one Francis Zaasita Menjo, who has since been convicted of fraud in connection with the transfers of those pieces of land to the plaintiffs had no authority to sell and transfer them. That may very well be so but the Interested Party has since 1997 done nothing to impeach the plaintiffs' titles. That is inexcusable indolence. In any case this suit is not the right forum to challenge the plaintiffs' titles.

The third and last reason why I find no merit in this application is that the same has been overtaken by events. The defendant has already paid compensation to the plaintiffs.

For these reasons, I dismiss this application with costs.

**DATED and delivered this 19<sup>th</sup> day of November, 2009.**

**D.K. MARAGA**

**JUDGE.**