

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Civil Appeal 141 of 2007

AGGREY NDOMBI.....1ST APPELLANT

**PAUL NDIANGUI T/A UMOJA AUTO GARAGE.....2ND
APPELLANT**

VERSUS

GRACE OMBARA.....RESPONDENT

R U L I N G

On the 22nd May, 2007, the appellants Aggrey Ndombi and Paul Ndiangui t/a Umoja Auto Garage, filed an application for stay of execution pending appeal under Order XLI Rule 4(1), Order L Rule 1 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act. The application was filed by S.M. Keyonzo Advocate. The application was listed for inter parte hearing on 4th July, 2007. The application was however not heard on that day. Thereafter, it came up for hearing on several other occasions but did not proceed.

On the 3rd July, 2007 Ombachi Moriasi & Co. Advocates filed a notice of change of advocates showing that the appellants had appointed the firm to act for them in place of S.M. Keyonzo Advocates. The firm of Ombachi Moriasi & Company Advocates also filed a certificate of urgency on behalf of the appellant seeking to have the applications dated 22nd May, 2007 certified urgent and interim orders extended. On 28th July, 2008, the application came up for hearing before me. Miss Omondi who was appearing for the respondent objected to Mr. Moriasi appearing for the appellant contending that he was not properly on record as no leave had been obtained from the court for the change of advocate. She contended that since the appeal is based on judgment and a decree, counsel wishing to come on record after the judgment must abide by Order III Rule 9A of the Civil Procedure Rules. Mr. Moriasi's response was that he was only coming on record in the appeal and not in the subordinate court matter, and therefore Order III Rule 9A of the Civil Procedure Rules does not apply.

A similar issue arose recently before me in *Civil appeal No.130 of 2008 Industrial Commercial Development Corporations vs Elias M. Mategwa*, wherein I stated as follows: -

“Order III Rule 6 of the Civil Procedure Rules states as follows: -

‘A party suing or defending by an advocate shall be at liberty to change his advocate in any cause or matter, without an order for that purpose, but unless and until notice of any change of advocate is filed in the court in which such cause or matter is proceeding and served in accordance with rule 7, the former advocate shall, subject to rules 11 and 12, be considered the advocate of the party until the final conclusion of the cause or matter, including any review or appeal.’

Underlining added.

My understanding of this rule is that where an appeal has been filed it is a continuation of the cause or matter filed in the lower court and the advocate on record in the lower court is deemed to be the advocate for the parties until conclusion of the appeal, unless a notice of change of advocates has been filed and leave has been granted for change of advocate under Order III Rule 9A of the Civil

Procedure Rules.”

This remains my position. In this case, the appellant filed a notice of change of advocate without leave of the court contrary to Order III rule 9A of the Civil Procedure Rules. I concur with the advocates for the respondent that Ombachi Moriasi & Company Advocates are improperly on record. Their notice of change of advocates must accordingly be struck out. Those shall be the orders of this court.

Dated and delivered this 1st day of August, 2008

H. M. OKWENGU

JUDGE

In the presence of: -

Wachira H/B for Moriasi for the appellant

Miss Omondi for the respondent