

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)
Civil Suit 2976 of 1996

KENYA COMMERCIAL BANK LTD.....PLAINTIFF

VERSUS

PETER THIONGO MUCHIRI.....DEFENDANT

RULING

A Notice of Motion dated 7th of November 2006 is brought by the firm of Advocates called Waithaka Wachira & Company advocates who desire to come on record on behalf of the Defendant. Judgment in this matter was entered on 9th of March 2005 and hence why the firm seeks leave of this court to come on record. The application seeks to take over the conduct of the defendant case from the firm of M'bijiwe Mugo & Co. Advocates. It was opposed by the plaintiffs counsel on the basis that the defendant obtained leave to act in person and that therefore there is no need to seek leave to take over the conduct of this matter from Mbijiwe & Company Advocates. I am able to confirm that as at the 10th of September 2004 the firm of Mbijiwe Mugo filed a Notice to act for the defendant. When this matter came up for hearing on 23rd of November 2004 the defendant informed the court that his advocate had failed to come to court to conduct the hearing and requested for leave to act in person. The court granted him that leave. It does seem that on the 8th of July 2005 the firm of Kaai Mugambi came on record when they filed a Notice of change of Advocate from Mbijiwe Mugo. What the plaintiff opposes is that the present application seeks to take over the action of this matter from Mbijiwe when in fact it was the defendant who was acting in person. In the Plaintiffs view therefore the present application is misplaced and they do seek to have it dismissed.

What the court finds strange is that the Plaintiff in an application such as this one does not necessary have to be served and since they do not have to be necessarily served their opinion on who should act for the defendant is neither here nor there. I will therefore proceed to ignore submissions that were made on behalf of the plaintiff in respect of the present application. The purpose of Order III rule 9 A is to ensure that the previous advocate who was on record is made aware of the application to take over the conduct of the matter. I believe the mischief for which this rule was made was to ensure that after judgment, parties would not at will change Advocates perhaps at times to the detriment of those advocates. Having in mind that mischief I am of the view that the present application will be allowed even if of late the defendant had been given leave to act in person. The court therefore does hereby grant the firm of Waithaka Wachira & Company Advocates leave to act for the defendant henceforth. In respect of the Notice of Motion dated 7th of November 2006 there shall be no order as to costs.

Dated and delivered on 29th day of January 2007.

MARY KASANGO

JUDGE