



REPUBLIC OF KENYA



**Kamau & another v Kiarie & 5 others (Environmental and Land Originating  
Summons 93 of 2015) [2022] KEELC 13372 (KLR) (6 October 2022) (Ruling)**

Neutral citation: [2022] KEELC 13372 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIROMENTAL AND LAND ORIGINATING SUMMONS 93 OF 2015  
LC KOMINGOI, J  
OCTOBER 6, 2022**

**BETWEEN**

**PETER THUO KAMAU ..... 1<sup>ST</sup> PLAINTIFF**

**GRACE MUTHONI THUO ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**LUCY WAMAITHA KIARIE ..... 1<sup>ST</sup> DEFENDANT**

**SAMUEL KIARIE ..... 2<sup>ND</sup> DEFENDANT**

**FAITH MUTHONI CHURU ..... 3<sup>RD</sup> DEFENDANT**

**JOSEPH NDUNGU NJOROGE ..... 4<sup>TH</sup> DEFENDANT**

**LUCY WAMBUI WAWERU ( 3<sup>RD</sup>, 4<sup>TH</sup> & 5<sup>TH</sup> DEFENDANTS SUED AS THE  
TRUSTEES OF P.C.E. A THINDIGUA CHURCH) ..... 5<sup>TH</sup> DEFENDANT**

**CHIEF LAND REGISTRAR, NAIROBI ..... 6<sup>TH</sup> DEFENDANT**

**RULING**

1. This is the preliminary objection dated May 27, 2022. The grounds are:-
  1. Under order 9 rule 5 the firm of AA Mudanya & Co has failed to file a notice of change of advocates and serve as required by the rules and is thus not legally on record and the former advocates for the defendants Kariuki Muigua & Co. are to be considered as on record.
  2. Under order 9, rule 6 the firm of AA Mudanya & Co has failed to serve a notice of change of advocates as required by the rules and is thus not legally on record and the former advocates for the Defendants Kariuki Muigua & Co are to be considered as on record.



3. Under order 9, rule 9 has failed to file a notice of change of advocates and serve as required by the rules and is thus not legally on record and the former advocates for the defendants Kariuki Muigua & Co are to be considered as on record.
2. On the June 9, 2022 the court with the consent of parties directed that the preliminary objection be canvassed by way of written submissions.
3. On the July 12, 2022, Mr Gatitu for the plaintiffs told the court that they had filed written submissions. By the time of writing this ruling, the plaintiffs' submissions are not on record.
4. The 1<sup>st</sup>, 3<sup>rd</sup> to 5<sup>th</sup> defendants submissions are dated July 12, 2022. Counsel submits that the defendants/respondents instructed his firm to execute the decree which he did by filing the notice of motion dated November 15, 2021. Prior to filing of the application, the firm of Kariuki Muigua & Co Advocates executed a consent dated November 15, 2021 allowing the firm of AA Mudanya & Co Advocates to come on record for the defendants/respondents. The said consent was filed together with the application dated November 15, 2021. The firm of AA Mudanya & Company advocates is therefore regularly on record.
5. He has put forward the cases of *Charles Onchari Ogoti v Safaricom Ltd & another* [2020] e KLR; *Gladys Pereruan v Batty Chepkorir* [2019] e KLR. He submits that the preliminary objection herein is a sham and frivolous and ought to be dismissed with costs.
6. Counsel raises two issues for determination:-
  - a. Whether or not the firm of AA Mudanya & Co Advocates is properly on record?
  - b. Whether or not the preliminary objection under review is an abuse of court process?
7. It is further submitted that the Defendants decided to change advocates and the former advocates acceded to this decision by signing consent to effect change. He has put forward the case of *William Andi Adode & another vs John Yier & another* CA Civil Application No 360 of 2004.
8. It is also submitted that counsel for the plaintiffs has not demonstrated which conflict of interest may be occasioned by the presence of the firm of AA Mudanya & Co Advocates in this matter. He has put forward the case of *Nicholas Kiptoo Arap Korir Salat v IEBC & Co others* [2013] e KLR.
9. Counsel further submits that the preliminary objection herein is an abuse of the court process. He has put forward the case of *Agnes Muthoni Nyangui & others v Anna Nyambura & 3 others* [2015] e KLR.
10. It is further submitted that the preliminary objection herein is an afterthought, malicious and an abuse of court process. He prays that the preliminary objection be dismissed with costs.
11. I have considered the grounds of the preliminary objection and the defendants submissions are on record. The issue for determination is whether the preliminary objection is merited.
12. Judgment in this matter was delivered on September 23, 2021. M/S Kariuki Muigua & Co Advocates were then acting for the defendants herein. The firm of AA Mudanya & Company advocates came on record and filed the notice of motion dated November 15, 2021.
13. I have gone through the notice of motion dated November 15, 2021 and I find that there is a consent signed by M/S Kariuki Muigua & Co Advocates acceding to the firm of AA Mudanya & Company Advocates to come on record for the defendants.
14. This is in compliance of order 9 rule 5 (b) of the *Civil Procedure Rules*. I find that the firm of AA Mudanya & Company Advocates is properly on record.



15. In conclusion, I find no merit in this preliminary objection and the same is dismissed with costs of the 1<sup>st</sup>, 3<sup>rd</sup> – 5<sup>th</sup> defendants.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 6<sup>TH</sup> DAY OF OCTOBER 2022.**

.....

**L. KOMINGOI**

**JUDGE**

**In the presence of:-**

Mr. Gatitu advocate for the Plaintiffs

Mr. Kinyua holding brief for Mr. Mudanya advocate for the Defendants

Mutisya - Court Assistant

