

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
Civil Case 122 of 1995

TERESIA KAGONDU ELASTU.....PLAINTIFF

Versus

MWOBE GATHUTE.....1ST DEFENDANT

LAND REGISTRAR KIANYAGA.....2ND DEFENDANT

RULING

The 1st defendant came to court with an application by way of Notice of Motion dated 29th August 2005. Before the counsel could argue that application the Plaintiff advocate raised a preliminary objection. The objection was to the effect that the 1st defendant advocate Macharia Muraguri could not appear for the 1st defendant for failing to comply with order III Rule 9 of the Procedure Rule. The Plaintiff advocate argued that after judgment the 1st defendant was represented by the firm of Ng'eno Wangalwa & Company Advocate. The Plaintiff Advocate therefore argued that unless leave was granted to the advocate presently on record to appear for 1st Defendant he could not act. In opposition to that objection the 1st defendant counsel argued that the 1st defendant had filed a notice to act in person before judgment. That accordingly there was no need to file an application for leave to act for him.

Order III Rule 9 provides that when there is a change of advocates or when a party decides to act in person having previously engaged an advocate after judgment has been passed such change or intention to act in person cannot be effected without an order of the court. The position in this matter was that judgment was on 17th March 1999. On 21st of September 2001 the Advocate Ng'eno Wangalwa filed and Notice of Appointment to act for the 1st defendant. There is no evidence that, that advocate has ever ceased to act for the 1st defendant.

Accordingly when the firm of Macharia Muraguri filed a Notice to act for the 1st defendant on the 14th January 2005, they did so in contravention of order 111 Rule 9. I find therefore that preliminary objection raised by Plaintiff advocate is well taken and does succeed. The effect of succeeding is that the firm of Macharia Muraguri cannot continue to act for the 1st defendant unless and until the same firm obtains the leave of the court. For the avoidance of doubt the application therefore filed by the said firm on dated 29th August 2005 shall be stayed until the court does grant leave to that firm to act for the 1st defendant. The Plaintiff having succeeded in her objection the court does hereby grant her costs of that preliminary objection.

Dated and Delivered at Nyeri on 11th May 2007.

MARY KASANGO

JUDGE