



REPUBLIC OF KENYA



**Koigi v Ngonyo & 16 others (Environment & Land Case 183 of 2017)  
[2022] KEELC 14886 (KLR) (17 November 2022) (Ruling)**

Neutral citation: [2022] KEELC 14886 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT & LAND CASE 183 OF 2017**

**JG KEMEI, J**

**NOVEMBER 17, 2022**

**BETWEEN**

**TERESIAH WANJIKU KOIGI ..... PLAINTIFF**

**AND**

**LINCOLN WARIU NGONYO & 16 OTHERS ..... DEFENDANT**

**RULING**

1. Dissatisfied with this Court's Judgment on 24/1/2022 (sic) in favour of the Plaintiff and against the Defendants, the Defendants/Applicants filed the instant Motion dated 21/3/2022 seeking stay of execution of the said Judgment pending the hearing and determination of their intended Appeal. The Motion is based on the grounds thereat and Supporting Affidavit of even date of Lincoln Wariua Ngonyo.
2. The 1<sup>st</sup> Defendant swore that he had authority to swear the Supporting Affidavit on behalf of 11 other Defendants as evidenced by the Authority to act therein. That they are aggrieved by the Judgment of this Court and have duly filed their Notice of appeal and draft memorandum of appeal annexed as LWN2. That their appeal raises pertinent issues of law and it may be rendered nugatory if the Plaintiff's proceed to execute the impugned Judgment. That they have been in occupation of the suit land for the last five years and they will be rendered homeless if the Application is not allowed.
3. Despite service upon the Plaintiff as evidenced by the Returns of Service dated 6/4/2022 and 19/5/2022, the Application is not opposed.
4. The main issue for determination is whether the Application is merited.
5. Before delving into the merits of the Application, it is imperative to address the competency of the instant Motion. It is filed pursuant to the provisions of Order 42 Rule 6, Order 51 Rule 1 *Civil Procedure Rules* and Sections 1A, 1B, 3 3A and 100 of the *Civil Procedure Act* and filed by the firm of Mburu Machua Advocates on behalf of the Defendants. The Court record reveals that the Defendants



were ably represented by the firm of Mbigi Njuguna & Co. Advocates until sometime 2/3/2022 when the said firm applied for certified copies of the Judgment and typed proceedings herein. Prior to this, the same firm had filed a Notice of Appeal dated 5/2/2022 against the impugned Judgment delivered on 24/2/2022.

6. The Defendants instructed a new firm of Advocates, M/S Mburu Machua Advocates to act for them in place of Mbigi Njuguna Advocates vide a Notice of Change of Advocates dated 21/3/2022. There is no evidence before this Court to show that the provisions of Order 9 Rule 9 Civil Procedure Rules have been complied with. Order 9 Rule 9 Civil Procedure Rules provides;

“9. Change to be effected by order of Court or consent of parties when there is a change of advocate, 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 shall not be effected without an order of the Court—

(a) upon an application with notice to all the parties; or

(b) upon a consent filed between the outgoing advocate and the proposed incoming advocate or party intending to act in person as the case may be.”

7. The Defendants’ alternate recourse was to proceed under Order 10 Rule 9 Civil Procedure Rules which states that an application under Rule 9 may be combined with other prayers provided the question of change of advocate or party intending to act in person is determined first.

8. This Court has previously pronounced itself on this subject in the case of *Stephen Mwangi Kimote – Vs- Murata Sacco Society* [2018] eKLR that;

“12. Article 50 (2)(b) of *the Constitution* protects the rights of an accused person to choose and be represented by an Advocate. Order 9 does not impede the right of a party to be represented by an Advocate of his choice. It only provides rules to impose orderliness in civil proceedings. Any change of Advocate should comply with the rules. Chaos would reign if parties can change Advocates at will without notifying the Court and the other parties...”

9. In the Court of Appeal of *Symposia Consult Limited v George Gikere Kaburu & 2 others* [2019] eKLR the Court dismissed an application seeking extension of time to file a notice of appeal out of time that was filed by Advocates who were improperly before Court.

10. The Application is improperly before this Court and the same is hereby ordered struck out. The Applicant retains the liberty to move the Court appropriately.

11. I make no orders as to costs.

**DELIVERED, DATED AND SIGNED AT THIKA THIS 17<sup>TH</sup> DAY OF NOVEMBER, 2022 VIA MICROSOFT TEAMS.**

**J G KEMEI**

**JUDGE**

Delivered online in the presence of;

Plaintiff – Absent



Ms. Ndichu HB Mburu Machua for 1<sup>st</sup> – 16<sup>th</sup> Defendants

Court Assistant – Dominic

