



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA**

Civil Suit 306 of 2001

- 1. SHELLY BEACH HOTEL LTD.**
- 2. KENSINGTON INTERNATIONAL LTD**
.....PLAINTIFFS

VERSUS

KENYA REVENUE AUTHORITY
.....DEFENDANT

RULING

The subject matter of this ruling is a dispute between the firm of Fadhil & Kilonzo Advocates and that of S. Mauncho & Co. Advocates. When this suit came up for hearing, Mr. Okachi Advocate who appeared as holding brief for Mr. Mauncho who practises in the name and style of S. Mauncho Advocates objected to the firm of Fadhil & Kilonzo Advocates appearing for the Plaintiffs.

Mr. Okachi was of the view that the aforesaid firm of Advocates was not properly on record.

In a sharp response, Mr. Kilonzo advocate on behalf of Fadhil & Kilonzo Advocates claimed that the firm of S. Mauncho Advocates had been removed by a notice of change of Advocates filed by Wangai Nyuthe and Co. Advocates on the 28th day of August 2003. It is the submission of Mr. Kilonzo that the firm of Wangai Nyuthe & Co. Advocates were replaced by the firm of Gikandi & Co. Advocates which firm was subsequently replaced by the firm of Fadhil & Kilonzo Advocates.

It is unfortunate that this court has to step in to arbitrate over such mundane issues which could have been sorted out easily had the advocates concerned observed the traditions and rules of professional ethics.

In order that the judiciary may be respected as a pure foundation of justice and the bar may be trusted as a fearless trustee of the client's cause, they have to submit to some ethical regulations. There is an established code of conduct written or unwritten for regulating the behaviour of a practicing lawyer towards himself, his client, his adversary in law and towards the court. His behaviour must not display any double-dealing or the act of a trickster. An advocate should be frank, reasonable and his attitude should be that of an ardent advocate for a course, but not that of a personal enemy of the adversary. Let me now focus on the issue at hand.

The history of this matter started on the 3rd day of July 2000 when the firm of Balala and Co. Advocates filed a plaint before the Chief Magistrate's court, Mombasa vide CMCC No. 2437 of 2000. The matter was taken over from the firm of Balala & Co. Advocates by the firm of Wangai Nyuthe & Co. Advocates in a Notice of change of Advocates dated 21st February 2001 and filed in Court on the 23rd day of February 2001. The firm of Wangai Nyuthe & Co. Advocates successfully applied to have the suit

withdrawn from the chief Magistrate's Court and transferred to the High Court via Nairobi HC (Milimani) MISC.APPLI. No. 107 of 2001 on the 24th day of April 2001. The record shows that on the 28th day of February 2003 the firm of S. Mauncho Advocates filed a notice of change of Advocates taking over the matter from the firm of Wangai Nyuthe & Co. Advocates for the plaintiffs.

The game of changing advocates continued unabated and on the 28th day of August 2003 the firm of Wangai Nyuthe & Co. Advocates filed a notice of change of Advocates and came on record in place of the firm of S. Mauncho Advocates for the Plaintiffs. The record shows that the firm of Gikandi & Co. Advocates filed a notice of change of Advocates dated 28th August 2003 as replacing the firm of Wangai Nyuthe & Co. Advocates for the plaintiffs.

On the 6th day of October 2003, the firm of Fadhil and Kilonzo Advocates filed a notice of change of Advocate taking over the matter from the firm of Gikandi and Co. Advocates.

From the above simple chronology of events it is clear that a lot has been hidden from this court. I will leave that for a while. I had earlier stated that, had the advocates followed the rules of professional ethics this court could not have been dealing with side shows like this. Those who have practiced law must know or ought to know that before an advocate takes over a matter from another, prior notice must be given to the advocates or firm of advocates appearing for the common client before filing a notice of change of advocates. When the learned advocates appeared before this court each of them was silent over whether or not they had complied with such a simple rule of courtesy. The question, which I must decide, now is: who is legally on record as appearing for the plaintiffs. From the record it is evident that the firm of Wangai Nyuthe & Co. Advocates and that of Gikandi & Co. Advocates each filed a notice of change of Advocates on 28th August 2003. By then the firm of S. Mauncho Advocate was on record as appearing for the Plaintiffs. The Notice of change of Advocates dated 16th June 2003 indicated that the firm of Wangai Nyuthe & Co. Advocates were coming on record in place of S. Mauncho Advocates. That filed by Gikandi & Co. Advocates dated 28th August 2003 indicated that the firm of Gikandi & Co. Advocates came on record in place of Wangai Nyuthe & Co. Advocates for the plaintiffs.

The record shows that the changes were endorsed by the Deputy Registrar on the 29th day of August 2003. What it means is that the firm of Wangai Nyuthe & Co. Advocates was replaced by the firm of Gikandi & Co. Advocates. The firm of Gikandi & Co. Advocates was replaced by the firm of Fadhil & Kilonzo Advocates on 6th day of October 2003.

The sum total of the whole Saga is that the firm of Fadhil & Kilonzo Advocates are properly on record as appearing for the plaintiffs and the firm of Wangai Nyuthe & Co. Advocates were phased out of record by the notice of change of advocates filed by the firm of Gikandi & Co. Advocates and endorsed by the Deputy Registrar of this court on 29th August 2003. That firm therefore has no business being on record because it was legally removed from record.

The upshot is that the matter should be fixed for hearing with the firm of Fadhil & Kilonzo Advocates appearing for the Plaintiffs unless otherwise removed and sacked by their clients.

Dated and delivered this 10th day of February 2006.

J.K. SERGON

J U D G E

In the presence of Mr. Kilonzo for the firm of Fadhil & Kilonzo Advocates and Okach h/b for Mr. Mauncho for S. Mauncho Advocates.

Mr. Ontweka h/b for Mr. Matuku for Kenya Revenue Authority.

Kilonzo: I apply for a mention date.

Ontweka: That is okay.

Okachi: That is okay

Court: Mention on 24/2/2006.

SERGON, J