



M’ikiamba & 4 others v Ekabu & 2 others (Environment and Land Appeal E008 of 2020) [2022] KEELC 15356 (KLR) (14 December 2022) (Ruling)

Neutral citation: [2022] KEELC 15356 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND APPEAL E008 OF 2020**

CK NZILI, J

DECEMBER 14, 2022

BETWEEN

STEPHEN M’IKIAMBA 1ST APPELLANT

**TABITHA N. LAARIA (SUING AS THE LEGAL REPRESENTATIVE
OF THE ESTATE OF SOLOMON RARIA M’ETHANGATHA -
DECEASED) 2ND APPELLANT**

**CHARITY GAKII ITABARI (SUING AS LEGAL REPRESENTATIVE OF ESTATE
OF JOHN MUTABARI THIMANGU - DECEASED) 3RD APPELLANT**

JAMES K AKWALU 4TH APPELLANT

AND

JULIUS RUKIOYA APPLICANT

AND

JOHN KIRAMANA EKABU 1ST RESPONDENT

LAND ADJUDICATION OFFICER 2ND RESPONDENT

ATTORNEY GENERAL 3RD RESPONDENT

RULING

1. By an application dated September 28, 2022, the court is asked to grant leave for the firm of Owang and Associates Advocates to come on record for the appellants in place of Maitai Rimita & Co Advocates and adopt or endorse a consent dated September 25, 2022 granting such leave. The court is also asked to find the notice of change of advocates dated March 9, 2022 as properly filed with leave of this court. The application is based on the reasons on its face and a supporting affidavit of Donald Owang sworn on September 28, 2022.



2. The reasons given are that; following instructions to take over the brief, the two advocates executed a consent dated February 25, 2022, which was filed in court on February 28, 2022 but out of an inadvertent mistake, the incoming advocates failed to seek for the court's endorsement of the consent and proceeded to file a notice of change of advocates on March 10, 2022. That the mistake of counsel should not be visited upon an innocent client. That it is only fair that the orders sought be allowed so that the intended appeal in the Court of Appeal can be heard on merits.
3. The application is opposed by a replying sworn on October 11, 2022 by Jobu Kiramana Ekabu on the basis that a notice of change of advocates can only be filed after leave is granted hence the notice of change dated March 9, 2022 was improperly, unprocedurally and irregularly on record and ought to be struck out or expunged from the court record.
4. It is on record that judgment herein was delivered on December 15, 2021 while the appellant was represented by the firm of Maitai Rimita and Co advocates. Following judgment, the said law firm filed a notice of appeal dated December 20, 2021. On January 14, 2022 the firm of Ngala J and Co Advocates filed an application seeking leave to come on record for the appellant and for an injunction pending appeal. The application was opposed by a replying affidavit sworn on January 27, 2022 by John Kiramana Ekabu. On March 10, 2022, another application was filed by the law firm of Owang and Associates dated March 9, 2022, seeking for temporary injunction pending the intended appeal. Accompanied by the application was a notice of change dated March 9, 2022. The said application was replied to by an affidavit sworn on March 21, 2022 by John Kiramana Ekabu.
5. The court proceeded to strike out the application dated January 14, 2022. By a ruling dated July 27, 2022 the 2nd application was also found incompetent and without merits for non-compliance with order 9 rules 6 & 9 of the [Civil Procedure Rules](#).
6. In this application the court is being asked to find that the notice of change dated March 9, 2022 is properly on record on account of a consent to come on record dated February 25, 2022 and filed in court on September 29, 2012. In other words, the court is being asked to grant leave under order 9 rule 9 of the [Civil Procedure Rules](#) and apply the same retrospectively to regularize an alleged consent dated February 25, 2022 but filed 7 months down the line, on September 29, 2022.
7. The reasons for the delay to file the consent on time or at all has not been explained. The applicants counsel has urged the court to find there was an inadvertent mistake which should not be visited upon an innocent party. Similarly, the court is told there is need to have the same endorsed so that an intended appeal can be fast-tracked.
8. There is no requirement in law for a notice of change of advocates at the High Court before going to the Court of Appeal. Order 9 rule 9 [Civil Procedure Rules](#) does not govern proceedings at the Court of Appeal. An appellant at the Court of Appeal is at liberty to change advocates without leave from the court appealed from.
9. If the advocates who filed the notice of change of advocates had been diligent and their client was honest enough, they would have established that he had between them and the previous lawyers, M/s Maitai Rimita Advocates engaged the law firm of Ngala and Co Advocates. The applicant had gone to an extent of swearing a supporting affidavit to the said application. It cannot therefore be true that he is an innocent party. He misled his advocates seeking to come on record for him and is wholly to blame for the turn of events.
10. Coming to the issue of backdating the leave and deeming a notice of change of advocates as properly filed, the court has already made a finding in its previous ruling that the current advocates are improperly on record. The court cannot therefore be called to regularize a null, void and an



incompetent document. The best that the court can do is to grant leave for the law firm of Owang and Associates to come on record in place of Matai Rimita and Co Advocates for the applicant. The notice of change of advocates shall be filed within 14 days from the date hereof otherwise the previous notice of change of advocates dated March 9, 2022 is incurably defective in law.

11. Costs to the respondent.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 14TH DAY OF DECEMBER, 2022

In presence of:

C/A: Kananu

Koech for C.P Mbaabu for 1st defendant

HON. C.K. NZILI

ELC JUDGE

