

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

AT NAIROBI COMMERCIAL DIVISION, MILIMANI

CIVIL CASE 134 OF 2005

FRANCIS KAIMURU GITU.....PLAINTIFF

VERSUS

ALBOSSAT SAVINGS & CREDIT SOCIETY LTD.....DEFENDANT

R U L I N G

Ordinarily, applications under Rule 9A of Order III of the Civil Procedure Rules (the Rules) for a new advocate to come on record after judgment has been entered in place of another advocate, do not raise controversy. But this one has. M/s Wachira Nderitu, Ngugi & Co., Advocates seek by notice of motion dated 19th April, 2005, to come on record for the Defendant in place of M/s Ojiambo & Co. Advocates. The latter have strenuously opposed the application. I have heard the arguments of the learned counsels. It is urged for the new advocates that the Defendant never instructed the outgoing advocates to act for it in the suit. The outgoing advocates argue otherwise. Those two positions are founded upon a more fundamental issue. That issue is as follows:-

The Defendant is a savings and credit society duly registered as a limited liability company. There are two sets of people who claim to be the legitimate officials of the Defendant. One set says that it duly instructed the outgoing advocates. The other one says that it duly instructed the incoming advocates. Underpinning all this is the fact that a compromise judgment has already been entered for the Plaintiff against the Defendant for the not insubstantial sum of Kshs. 6.5 million, which judgment the latter group wishes to challenge. It has not helped matters that the Plaintiff is said to be a brother of one of the persons who instructed the outgoing advocates to act for the Defendant and to compromise the suit.

It is plain that the issues that underlie the present application, as seen above, go well-beyond the scope of this present application. They cannot be litigated. They are substantial issues which include the broad issue who were the bonafide and legitimate officials of the Defendant with authority to instruct counsel in this suit? Those issues must be tried and determined in a substantive suit brought in that regard in the Civil Division of this court.

I think what I should do in the interests of justice is that I will order a stay of all proceedings in this suit (including execution of decree) for 30 days to enable an appropriate suit as alluded to above to be brought. And since it is the group represented by M/s Wachira Nderitu, Ngugi & Company that is challenging the legitimacy of the group that instructed M/s Ojiambo & Company, they will have to take the responsibility of bringing that suit. Once the said issue is resolved the proceedings herein (including the present application) can resume. The matter shall be mentioned to see if such suit has been filed and for further orders. Orders accordingly. Costs in the cause.

DATED AND SIGNED AT NAIROBI THIS 15TH DAY OF JUNE, 2005.

H.P.G. WAWERU

JUDGE