



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

CIVIL CASE 432 OF 2002

JOHN NGARI MACHARIA.....PLAINTIFF

VERSUS

FRANCIS KIARIE MBUGUA & ANOTHER.....DEFENDANT

RULING

This suit is closed and finalized having been dismissed due to non-attendance of the plaintiff.

An application filed and dated the 9.2.05 seeking for prayers that:

- 1) M/s J. Thongori & Co. be granted leave to act for the plaintiff/applicant
- 2) That order f6.7.04 dismissing main suit be set aside and reinstated
- 3) That the costs of this application be provided for.”

M/s J. Thongori and Co. Advocates who filed the said application for hearing for 9.6.05 have failed to attend to court. The advocates for the 3rd party were also absent. The advocates for 1st and 2nd defendant was present to court and after the matter was called out outside court the proposed advocates mentioned were absent.

Under order 9b r 3(a) of the Civil Procedure Rules the advocate for 1st and 2nd defendant asked that this court strike out the application on grounds that it is defective. That there must be two separate application and the intended proposed advocate should have first sort leave to come on record before filing an application when he was not on record. I would agree. The procedure to come on record is governed by a new rule being order 3 r 9(a) LN128/01 whereby it states:-

“When there is a charge 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 upon an application with notice to the advocate on record.”

This rules provides that once a suit has been finalized and orders or judgment has been given, a party has no right to come onto the file, nor a new advocate and appear herein. There must be an application filed to court for leave to come on record.

This application must be served upon the advocate still on record who should appear to court to state whether she or he objects to a new advocate coming on record or the litigant wishing to act in person. The objection could be on the issue of o fees to the advocate on record that may be dealt with by a letter

of undertaking either by the litigant if he act in person or by the new advocate proposing to come on record.

The advocate on record once served and if she or he does not wish to appear to court should enter and file a separate consent letter to be duly filed and recorded by the deputy registrar as part of the records. This consent would be separate from the application for leave to change advocates after a finalized suit.

I find herein that the application before court is irregular and defective. I hereby allow the preliminary objection and do struck out the same.

The application dated and filed on 9.2.05 be and is heresy struck out with costs to the 1st and 2nd defendants. The 3rd and 4th defendants being absent there is no costs awarded to them.

Dated this 9th day of June 2005 at Nairobi.

M.A. ANG'AWA

JUDGE

Kinyanjui & Njau Co. Advocates for the plaintiff/ Proposed Advocate J. Thongori & Co. Advocates

Christine Oraro & Co. Advocates for the defendant