



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT ELDORET**  
**Civil Appeal 92 of 2004**

**JAMES KIHARA MUTHUNDU ..... APPELLANT**

**VERSUS**

**LEONARD NGONDE & 100 OTHERS ..... RESPONDENT**

**RULING**

The applicants who rely on Orders III rules 6, 7, 9A and XLI rule 4 of the Civil Procedure Rules, seeks an order to have struck out an appeal which was filed herein. It is his contention that the said appeal is incompetent.

They base their application on the grounds that the firm of advocate which filed the appeal lacked the capacity to represent the appellant who is the respondent herein as it had not obtained leave of the court to represent the appellant.

*Order III rules 6, 7 and 9A stipulates that:*

*“6. A party suing or defending by an advocate shall be at liberty to change his advocate in any cause or matter, without an order for that purpose, but unless and until notice of any change of advocate is filed in the court in which such cause or matter is proceeding and served in accordance with rule 7, the former advocate shall, subject to rules 11 and 12, be considered the advocate of the party until the final conclusion of the cause or matter, including any review or appeal.*

*7. The party giving the notice shall serve on every other party to the cause or matter (not being a party in default as to entry of appearance) and on the former advocate a copy of the notice endorsed with a memorandum stating that the notice has been duly filed in the appropriate court (naming it)*

*9A. 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 upon an application with notice to the advocate on record.”*

It is clear from the above provisions of the law that, the representation by Counsel by the first counsel on record is deemed to cover the period of the suit, which runs from the date of such appointment until the suit is finally determined. It is important to note that the suit is not finally determined or concluded until any review or appeal which may be preferred therein is heard and determined.

That being the case then, a litigant who would wish to change advocates after judgment has been delivered in his suit, must ensure compliance with Order III rule 9A aforementioned, which makes it a mandatory requirement, that such an advocate who intends to come on record must first obtain leave of

the court, otherwise all action that shall be taken by the advocate who has not obtained such leave shall be deemed null and void.

It is evident from the pleadings herein that there was a change of advocates after judgments were delivered in the consolidated suits, but that no leave was obtained by the firm of Wahinya & Associates to come on record before filing this appeal.

I do therefore find that their action was contrary to Order III rule 9A and in the circumstances the appeal which was filed by the said firm is null and void. It is struck out with costs.

Dated and delivered at Eldoret this 27th day of September 2005.

**JEANNE GACHECHE**

**JUDGE**

Delivered in the presence of:

Mr. Obudho for the appellant present

Mr. Angu for the respondent/applicant