

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 949 OF 1997

**AHMED ABDALLA MAAWY..... PLAINTIFF
VERSUS
SOUTHERN TRAVEL SERVICES LTD.....DEFENDANT**

RULING

Mr. Kutuku, the Learned Counsel for the Respondent raised a preliminary objection that the advocate for the applicant is not properly on record because he did not seek the court's leave as required by the new amended Order 3 (9) (a) of the Civil Procedure Rules. Mr. Okwach, the Learned Counsel for the applicant while accepting that they had not sought the court's leave said that the situation here did not warrant seeking of the leave as the previous advocate was aware of the change of advocates and indeed passed the entire file to his firm.

The mischief sought to be lured by this amendment was the rampant practice which had sprung up where advocates were taking up cases at the last stages of execution without informing the advocate who had been acting for the client all along. In this instant case the previous advocate was aware of the change and had no objection as evidenced by his handing over the file to Mr. Kwach since the respondents are aware of this change and there is no prejudice suffered.

I therefore find that the lawyers who took over from the previous lawyers are properly before the court notwithstanding that leave was not sought from the court. In other words I do not find the non observance of this procedure to be fatal. The objection is therefore overruled and the advocates for the applicants are held to be properly on record.

Delivered and dated this 7th day of March, 2001.

**KASANGA MULWA
JUDGE**