



REPUBLIC OF KENYA



**Njoroge v Wambua & 2 others (Environment & Land Case
195 of 2015) [2025] KEELC 2968 (KLR) (1 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 2968 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE 195 OF 2015**

AY KOROSS, J

APRIL 1, 2025

BETWEEN

DR GEORGE W JOSIAH NJOROGE PLAINTIFF

AND

JUSTUS MUSAU WAMBUA 1ST DEFENDANT

MOSES NDUNG'U MUNGAI 2ND DEFENDANT

DISTRICT LAND REGISTRAR MACHAKOS 3RD DEFENDANT

RULING

1. The notice of motion (motion) dated 24/10/2024 that is the subject of this ruling is filed by the 2nd defendant, and in it, this court is moved under several provisions of law, and the 2nd defendant has sought several reliefs from this court. Some of the reliefs are spent, and the residual reliefs are:
 - a. That the 2nd defendant be granted leave to file the intended appeal out of time and the annexed notice of appeal be deemed duly filed.
 - b. That pending the hearing and determination of the appeal, there be a stay of execution of this court's judgment delivered on 1/03/2023.
 - c. That the costs of the motion be provided for.
2. The motion is based on the grounds set out on its face and on the supporting affidavit of the 2nd defendant, Moses Ndung'u Mungai, which is deposed on even date.
3. Of significance in this affidavit is that he averred that his previous counsel on record had died; hence, he could not appeal against the judgment of this court in good time.
4. Disclosures were not made as to who this particular counsel was, but from the record, he had always been represented by the law firm of M/s. Omwenga & Co. Advocates.



5. The plaintiff opposed the motion by filing a replying affidavit deposed on 3/01/2024 by the plaintiff Dr. George Wamwere-Josiah Njoroge, where he stated that this previous advocate of the 2nd defendant was very much alive as evidenced by the advocates' search engine and telephone conversations between his counsel and counsel Mr. Omwega. Significantly, the other defendants did not participate in these proceedings.
6. On 30/1/2025, this court reserved the motion for ruling today, but in the intervening period, a notice of withdrawal of the motion was filed on 11/02/2025 by the 2nd defendant.
7. Nevertheless, this notice has not been served as there is no return of service, and neither has it been adopted as an order of the court, and it is, therefore, inconsequential to the outcome of this ruling.
8. Having carefully given thought to the motion, its grounds, affidavits, and submissions, the issues that commend themselves for determination are: -
 - a. Whether the law firm of Ms. Njugi B.G. & Co. Advocates is properly on record for the 2nd defendant.
 - b. Whether the motion is merited.
 - c. What orders should this court issue, including an order as to costs?
9. In the analysis and determination, these issues shall be dealt with simultaneously.
10. On the 1st issue, Order 9, Rule 9 of the Civil Procedure Rules captures the post-judgment process where an advocate or party seeks to come on record in place of an advocate who was previously on record. This provision provides as follows;

“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—

 - (a) upon an application with notice to all the parties; or
 - (b) upon a consent filed between the outgoing advocate and the proposed incoming advocate or party intending to act in person as the case may be.”
11. This proviso does not impede a litigant from choosing an advocate of his choice, and the mischief of this legal provision is to cure instances of a litigant circumventing paying the legal fees of an advocate who was previously on record and also to inform the court and parties of such change.
12. However, it outlines procedures to be adhered to and if a party seeks to change Advocates, post-judgment, the first scenario is that the incoming advocate or litigant who now wants to act in person must make a formal application to the court with notice to all parties who participated in the suit for grant of leave to come on record or act in person.
13. In the alternate scenario, the incoming advocate or litigant in person has to obtain the written consent of the previous advocate on record, file the consent in court, and then seek leave to come on record.
14. In the circumstances of this court where this court rendered its judgment on 1/01/2023, the law firm of Njugi B.G. & Co. Advocates did not adhere to the legal steps envisaged in law when they filed the motion on 24/10/2024 as they never sought leave to come on record.
15. Further, at the time they filed the motion, they did not obtain the written consent of the previous advocate on record, file the consent in court and have it adopted as an order of the court.



16. Although they filed a consent to come on record subsequent thereafter on 16/12/2024, this could not cure the legal mishap. Given that the law firm of Njugi B.G. & Co. Advocates is not being properly on record, this court finds the motion incompetent.
17. Since the 1st issue has determined the motion and renders a determination of the 2nd issue unnecessary, it is essential for this court to mention that because of the scandalous explanations for the delay which was full of untruths and purely intended to gain an unfair advantage before this court, if this court had considered the motion on merits, it would have found the motion unmerited.
18. Lastly, for the foregoing reasons and findings and in dealing with the last issue, this court ultimately strikes out the notice of motion dated 24/10/2024 with costs to the plaintiff. Since the 1st and 3rd defendants did not participate in these proceedings, costs are not awarded to them.

Orders accordingly.

DELIVERED AND DATED AT MACHAKOS THIS 1ST DAY OF APRIL, 2025.

HON. A. Y. KOROSS

JUDGE

01.04.2025

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform

In the presence of;

Mr. Kariuki for plaintiff/respondent.

N/A for 2nd defendant/applicant.

Ms Kanja- Court Assistant.

