



Stantech Motors Limited v Syokimau Farm Limited & 4 others (Environment and Land Case Civil Suit E005 of 2022) [2025] KEELC 6127 (KLR) (23 September 2025) (Ruling)

Neutral citation: [2025] KEELC 6127 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT AND LAND CASE CIVIL SUIT E005 OF 2022
AY KOROSS, J
SEPTEMBER 23, 2025**

BETWEEN

STANTECH MOTORS LIMITED PLAINTIFF

AND

SYOKIMAU FARM LIMITED 1ST DEFENDANT

PAUL MASILA KIMEU 2ND DEFENDANT

BENEDICT MACKENZIE MUTUKU 3RD DEFENDANT

SAMUEL NDERITU 4TH DEFENDANT

CHIEF LAND REGISTRAR 5TH DEFENDANT

RULING

1. Being dissatisfied with the judgment delivered by this court on 8/04/2024, the 2nd – 4th defendants promptly lodged a notice of appeal, thus paving the way for this court to entertain the instant motion dated 8/04/2024 that is now the subject of this ruling, which sought the following reliefs: -
 - a. Spent.
 - b. Spent.
 - c. Pending the hearing and determination of the appeal, there be a stay of execution of the judgment dated 3/04/2024 and all other consequential orders.
 - d. Costs of the motion be provided for.
2. The motion is supported by the grounds therein as well as the affidavit sworn on 8/04/2024 by the 3rd defendant. In a nutshell, he stated that a) he is aggrieved by the entire judgment delivered by this court and has appealed to the Court of Appeal, b) the judgment issued positive orders, c) the appeal



is arguable and has good chances of success, c) if the stay of execution of the judgment is not granted, the 1st-4th defendants will suffer irreparable loss and damage as they were in possession, and lastly, e) the motion had been filed without delay.

3. The motion is opposed vide replying affidavit sworn by Patrick Mweti Kailikia for the plaintiff on 12/06/2024. In short, he asserted that: a) the plaintiff is in possession and occupation of the suit property, b) the notice of appeal was filed by a law firm that was not properly on record, and that there was no valid appeal; and
4. C)The memorandum of appeal does not disclose any arguable appeal, nor does it have any chance of success. There was nothing to be rendered nugatory, and, in the end, d) the plaintiff has secured a loan with the suit property, and it is still servicing it, and if a stay is granted, then it will suffer.
5. The motion was canvassed by the oral submissions of SC Dr. Khaminwa, allegedly on record for the 1st to 4th defendants. Dr Khaminwa relied on the grounds in support of the motion and supporting affidavit thereof and argued that the court should exercise discretion in favour of the 1st to 4th defendants. Senior counsel also maintained that the issue of legal representation is a technical issue.
6. Whereas Mr. Mutinda, who is on record for the plaintiff, argued that first of all, Dr Khaminwa's representation offends the provisions of Order 9 Rule 9 of the Civil Procedure Rules, and the issue of an additional counsel could not suffice. Counsel also relied on the replying affidavit. It is worth noting that although counsel stated that he had also filed grounds of opposition, there is none on record.
7. This court has carefully considered the motion, its grounds, affidavits, and oral submissions, and the 2 issues that fall for determination are: -
 - a. Whether the law firm of Khaminwa & Khaminwa Advocates is properly on record for the 1st to 4th defendants.
 - b. Whether the 1st to 4th defendants have met the legal threshold to warrant a stay of execution pending appeal.
8. These 2 issues shall be handled consecutively.
 - a. Whether the law firm of Khaminwa & Khaminwa Advocates is properly on record for the 1st to 4th defendants.
9. On matters of law, 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.”
10. This proviso does not impede a litigant from choosing an advocate of its 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 a change.



11. 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.
12. 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.
13. In this case, the 1st and 4th defendants have not followed the laid down legal procedure as the law firm of Ms. Panam & Co. Advocates, which has been on record for these parties from the date it filed a memorandum of appearance dated 8/02/2021 to the time of entry of judgment is not aware of any change of advocates as there is no consent from it allowing it to excused from the proceedings and for Ms. Khaminwa & Khaminwa Advocates to take over the conduct of the matter. Further, no leave to come on record has been sought by the incoming counsel.
14. In the circumstances, this court agrees with the plaintiff's counsel and finds the motion is incompetent as it offends the provisions of Order 9 Rule 9 of the Civil Procedure Rules. It also finds that the purported notice to act alongside Ms. Khaminwa & Khaminwa Advocates by the law firm of Ms. Sila & Company Advocates, dated 4/06/2024, is incompetent. This notice by Ms. Sila & Company Advocates is hereby struck out from the record. This finding renders a determination of the 2nd issue unnecessary.
15. In the end, this court hereby strikes out the notice of motion dated 8/04/2024, with each party bearing their respective costs.

Orders accordingly.

DELIVERED AND DATED AT MACHAKOS THIS 23RD DAY OF SEPTEMBER, 2025.

HON. A. Y. KOROSS

JUDGE

23. 09.2025

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In the presence of;

Mr. Mutinda for the plaintiff/respondent.

Senior Counsel Khaminwa for the applicant.

Ms Kanja- Court Assistant.

