



REPUBLIC OF KENYA



KENYA LAW
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**Watsuma v Muraria (Environment & Land Case 190 of 2021)
[2024] KEELC 7410 (KLR) (5 November 2024) (Ruling)**

Neutral citation: [2024] KEELC 7410 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE 190 OF 2021
LL NAIKUNI, J
NOVEMBER 5, 2024**

BETWEEN

DR ANDERSON CHIBULE WATSUMA PLAINTIFF

AND

CATHERINE NYAMBURA MURARIA DEFENDANT

RULING

I. Introduction

1. On 31st October, 2024 the Honorable Court undertook to provide specific and pragmatic direction with regard to certain matters pertaining to the impugned dispute in this Civil Case. The issues were namely:-
 - a. The medical condition of the Plaintiff which had generated other underlying aspects being:-
 - i. The Legal representation – bedeviling the two Law firms M/s. Marende, Necheza and Company Advocates and M/s. O.M. Robinson & Company Advocates all claiming to be having firm instructions to continue providing professional legal service for the Plaintiff herein
 - b. The legal status of the suit after a Notice of withdrawal of the suit was filed by the law firm of M/s. O.M. Robinson and Company Advocates dated 22nd March, 2024.
2. On 3rd April, 2024, all the above issues squarely came to play openly in court. Subsequently, the Honorable Court – being faced with two (2) documents namely the Notice of Change of Advocate dated 22nd March, 2024 and a Notice to withdraw suit dated 2nd April, 2024 both drawn by the Law firm of M/s. O.M. Robinson and Company Advocates, the Honorable Court directed the two Law firms to submit on the underlying issues and which they diligently did.



3. Pursuant to this, on 30th April, 2024 the Honorable Court rendered a comprehensive Ruling on the Matter. In a nutshell the court ordered inter alia:-
 - a. The Plaintiff to undergo a medical Examination under the [mental Health Act](#) Cap. 248 and a report to be prepared and court to be furnished with a copy.
 - b. In the meantime, the proceedings of this case to be stayed – meaning the issue of the Notice of Change of Advocates and the Notice of the Withdrawal of the suit under Order 25 (1) of the Civil Procedure Rules 2010 in abeyance.
4. On 23rd October, 2024, the Honorable Court’s attention was drawn to the fact that the Plaintiff had fully accomplished and /or complied with these directions. Indeed, he had undergone a medical examination as directed and that a Guardian Ad Litem was issued by court sitting as the High Court Succession Family Division whereby M/s. Rhodah Chibule the wife of the Plaintiff had been appointed to act for him.
5. Arising from these positive development, the Honorable Court was fervently impressed. In order to forge forward, in the given circumstances the Honourable Court directed the Leraned Counsels who were present in Court that witness summons be issued for the duly appointed Guardian Ad Litem to physically appear in Court. In so doing, the Court based its powers from on the Inherent powers vested in Court Under the provisions of Article 159 (1) and (2) of [the Constitution](#) of Kenya, Section 1, 1A, 3 and 3A of the [Civil Procedure Act](#) Cap 21 Section 3 and 13 of the Environment and [Land act](#) No. 19 of 2011, Sections 101 of the [Land Registration Act](#) No. 3 of 2012, Section 150 of the [land Act](#) No. 6 of 2012 and Section 173 of the [Evidence Act](#) Cap 80 and provide Court with some information which would expedite the matter and unravel the issues at hand.
6. The Honorable Court direct that this takes place on 31st October, 2024 in open court.

II. The Court proceedings.

7. On 31st October, 2024, Mr. Malombo Advocate and M/s. Rhodah Chibule appeared. Unfortunately, and taking that the matter had been published in the court portal and the court’s Daily Cause list from 17th October, 2024, a document which has a wide circulation Internationally and locally particularly amongst Advocates, none of the Advocates or agents from the Law firm of M/s. Marende Necheza & Company Advocates appeared.
8. Resultantly, the Honorable Court obtained salient and basic information from M/s. Chibule. These included:-
 - a. Her personal particulars as stated from a Copy of her national identity card failed in court
 - b. Her relationship with the Plaintiff – being husband and wife and then children as a result and cohabitation
 - c. His current medical condition from the beginning of 2024 and as supported from the medical report by Dr. C.M. Mwangome – a Consultant Physician – trading in style and name of “Mental Health Clinic” dated 22nd March, 2024 and its conclusion. The medical report was also filed in court.
 - d. Her being appointed as a guardian Ad Litem on 25th September, 2024 by High Court – A copy of the order was also filed.



- e. Her desire to have the Law firm of M/s. O.M. Robinson and Company Advocate and the continuation of the adjudication of the Court Civil Case. None of these were rebutted.

III. The Directions

- 9. Based on the above detailed background the Honorable Court will now proceed to make the following directions.
 - a. That clearly I am satisfied that the orders and directions by this court have been adhered with the fulfilled to the letter and spirit pursuant to the Ruling of this Court of 30th April, 2024.
 - b. That indeed:-
 - i. A Medical report has been filed spelling out clearly the medical and health condition of the Plaintiff
 - ii. A Guardian Ad Litem has been appointed in accordance with the Provisions of the law.
 - iii. The Guardian Ad Litem has not only appeared in court personally but also expressly stated her desired position on the matters at hand. None of these have been challenged.
 - c. That in the given circumstance and based on the surrounding facts and inferences thereof I do make the following orders:-
 - i. The Law firm of M/s. O.M. Robinson and Company Advocates are properly on record for the Plaintiff replacing the law firm of M/s. Marende Necheza and Company Advocate in accordance with the Provision of Order 9 Rule 5 of the Civil Procedure Rules 2010.
 - ii. The Guardian Ad Litem M/s. Rhodah Nyevu Chibule now takes over this matter on behalf of the Plaintiff going forward in the fullness of time.
 - iii. The Guardian Ad Litem has all right to decide on how the suit should be adjudicated including its withdrawal based on the Notice of Withdrawal of the suit dated 22nd March, 2024.
 - d. That the Law of M/s. Marende Necheza and Company Advocates will cease from acting for the Plaintiff pursuant to the Provisions of Order 9 Rule 13 of Civil Procedure Rules 2010 and should be at liberty to pursue their Bill of Costs (Party to Party) based on the Advocates Remuneration Order (ARO) for the Professional Legal Services rendered accordingly.
 - e. That for expediency sake the matter to be mentioned on 5th December, 2024 for progress made and for further directions.
 - f. That parties have a right to appeal over this direction.

It is so ordered accordingly.

RULING DELIVERED THROUGH THE MICRO – SOFT TEAMS VIRTUAL MEANS SIGNED AND DATED AT MOMBASA THIS 5TH DAY OF NOVEMBER 2024.

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HON. MR. JUSTICE L.L NAIKUNI

ENVIRONMENT AND LAND COURT AT



MOMBASA

Ruling delivered in the presence of:-

- a. M/s. Firdaus – the Court Assistant.
- b. Mr. Mohamed Advocate holding brief for Mr. Malombo Advocate for the Plaintiff.
- c. No appearance for the Law firm of Messrs. Marende & Necheza Advocate formerly for the Plaintiff.

