



**Ndungu v Land Registrar, Kiambu & 2 others (Environment and Land Miscellaneous Application E031 of 2022) [2023] KEELC 16206 (KLR) (13 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 16206 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT THIKA**  
**ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E031 OF 2022**  
**JG KEMEI, J**  
**MARCH 13, 2023**

**BETWEEN**

**MARY WANGECHI NDUNGU ..... APPLICANT**

**AND**

**LAND REGISTRAR, KIAMBU ..... 1<sup>ST</sup> RESPONDENT**

**C W KINUTHIA ADVOCATES ..... 2<sup>ND</sup> RESPONDENT**

**JOSEPHE NDUNGU KAMAU ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. The application dated the 20/5/2022 is urged under order 42 rules 4-7 and order 51 of the [Civil Procedure Rules](#) and sections 1A, 1B, 3A and 95 of the [Civil Procedure Act](#) and all other provisions of the law.
2. Dissatisfied with the trial court's ruling dated the 12/10/2021 in Misc. Application No 21 of 2021 delivered by the Hon C N Mugo, the applicant moved this court on appeal and filed the notice of motion dated the 20/5/2022 seeking inter alia the following orders;
  - a. The court be pleased to grant the applicant leave to file an appeal out time against he ruling delivered on the 12/10/2021 in Limuru SPMCC in Misc. No 21 of 2021.
  - b. That upon the grant of the said leave to file an appeal out of time, the memorandum of appeal on record be deemed to have been duly filed.
  - c. Costs of the application be in the cause.
3. The application is premised on the grounds set out thereat and the supporting affidavit of the deponent sworn in May 2022. In it the deponent states that she is dissatisfied with the ruling of the trial court delivered on the 12/10/2021 and intends to file an appeal as set out in the draft memorandum of appeal



annexed to the application. She bemoaned how her previous Advocates failed to file an appeal on time nor seek stay of the ruling, the subject of the appeal and urged the court not to visit the mistakes failures omissions and commissions of her erstwhile Counsel on her.

4. The court was urged to exercise its discretion in her favour seeing that her appeal is meritorious and stands a high chance of success, it will serve the best interest of justice if the application is allowed, no prejudice will visit the Respondents if the application is granted as the parties shall be afforded the right to be heard on merit. If the application is not granted the applicant avows will suffer loss, prejudice and damages.
5. The 1<sup>st</sup> respondent has not opposed the application.
6. The 2<sup>nd</sup> and 3<sup>rd</sup> respondents while opposing the application maintained that the same is frivolous, vexatious and an abuse of the process of the Court. They filed grounds of opposition dated the 2/6/2022 on the grounds that; the applicant has not complied with the provisions of order 9 rule 9 of the [Civil Procedure Rules](#); the Advocate on record failed to seek the leave of the court or obtain consent of the previous Advocate to come on record and for those reasons urged the court to dismiss the application with costs to the 2<sup>nd</sup> and 3<sup>rd</sup> respondents.
7. The applicant filed written submissions through the firm of WAKLAW Advocates and the 2<sup>nd</sup> and 3<sup>rd</sup> respondents filed through the firm of C W Kinuthia & Company Advocates. I have read and considered the said submissions on record.
8. The key issues for determination are; whether the applicant has complied with the provisions of order 9 rule 9 of the [Civil Procedure Rules](#); Secondly whether the applicant is entitled to leave to file an appeal out of time; thirdly who meets the costs of the application.
9. Order 9 rule 9 [Civil Procedure Rules](#) provides;  
“  
“9. Change to be effected by order of court or consent of parties  
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. It has not been denied by the applicant that she was represented by another advocate in the trial court which advocate has been blamed for not filing the appeal on time. the court was not shown when the instructions to file appeal were given. That said the fact of the change of representation having been admitted needed to have complied with the provisions of order 9 rule 9 of the [Civil Procedure Rules](#).
11. This court has previously pronounced itself on this subject in the case of [Stephen Mwangi Kimote Vs Murata Sacco Society](#) [2018] eKLR that;  
“ 12. Article 50 (2)(b) of [the Constitution](#) protects the rights of an accused person to choose and be represented by an Advocate. Order 9 does not impede the right of a party to be represented by an Advocate of his choice. It only provides rules to impose orderliness in civil proceedings. Any change of Advocate should



comply with the rules. Chaos would reign if parties can change Advocates at will without notifying the court and the other parties...”

12. I am guided by the crisp words of the appellate court in *Symposia Consult Limited v George Gikere Kaburu & 2 others* [2019] eKLR where the court stated as follows;

“While I sympathize with the predicament of the applicant’s Managing Director’s wife, the non-compliance of the rules of procedure by the applicant’s Counsel are fatal to the application before me. As it has often been said, every game is its rules.”

13. In the upshot I find the firm of Messrs WAKLAW Advocates have not complied with the Provisions of order 9 rule 9 of the *Civil Procedure Rules*. I find no necessity to consider the 2<sup>nd</sup> issue in the circumstances.

14. Final orders

- a. The application being improperly before court is hereby struck out.
- b. The costs shall be in favour of the 2<sup>nd</sup> and 3<sup>rd</sup> respondents.

15. It is so ordered.

**DELIVERED, DATED AND SIGNED AT THIKA THIS 13<sup>TH</sup> DAY OF MARCH, 2023 VIA MICROSOFT TEAMS.**

**J G KEMEI**

**JUDGE**

Delivered online in the presence of;

Kirimi for Applicant

1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents - Absent

Court Assistants – Esther / Kevin

