



REPUBLIC OF KENYA



**KENYA LAW**  
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**Wanjiru & another v Tito & 2 others (Environment and Land Appeal  
1 of 2018) [2023] KEELC 16094 (KLR) (14 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 16094 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT AND LAND APPEAL 1 OF 2018  
MN GICHERU, J  
MARCH 14, 2023**

**BETWEEN**

**SUSAN WANJIRU ..... 1<sup>ST</sup> APPELLANT**

**MIRRIAM WANJIRU ..... 2<sup>ND</sup> APPELLANT**

**AND**

**TITUS TITO ..... 1<sup>ST</sup> RESPONDENT**

**LUCY GATHONI ..... 2<sup>ND</sup> RESPONDENT**

**MELICA NDUNGE ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. This ruling is on the Notice of Preliminary objection dated March 5, 2021 which provides as follows.

“The application dated February 7, 2021 offends order 9, Rule 9, *Civil Procedure Rules* as the law firm of Mugambi Njau is not properly on record”.

The grounds for the Preliminary Objection are that it is the firm of Kabiru and Company Advocates that represented the Appellants in the appeal yet the firm of Mugambi Njau came on record without complying with Order 9, Rule 9, *Civil Procedure Rules*.

2. In answer to the Preliminary Objection, the Appellants counsel has said in the submissions dated January 18, 2023 that since this court refused to entertain the said objection on October 18, 2021, then the court is now *functus officio* and the objection is unmerited.
3. I have considered the Preliminary Objection as well as the submissions by the Appellants’ counsel. I find that the firm of Mugambi Njau has not filed an application to come on record for the Appellant in the place of the firm of Kabiru and Company Advocates. Alternatively, the same firm has not filed a consent between it and the outgoing firm of advocates.



The firm of Mugambi Njau has been given an opportunity to prove compliance with Order 9, Rule 9, [Civil Procedure Rules](#) but it has failed to do so. The fact that I allowed the application dated February 7, 2021 to be heard does not mean the firm of Mugambi Njau was absolved of the responsibility of proving compliance with the law. The reason for allowing the two pending applications to be heard simultaneously was to expedite the disposal of the suit.

For the stated reasons, I uphold the Preliminary Objection and find that the firm of Mugambi Njau is not properly on record for failure to comply with the mandatory provisions of Order, rule 9, [Civil Procedure Rules](#).

**DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 14<sup>TH</sup> DAY OF MARCH, 2023.**

**M.N. GICHERU**

**JUDGE**

