



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT CHUKA**

**CHUKA ELC CASE NO. 258 OF 2017**

**FORMERLY MERU ELC. CASE NO. 116 OF 2017**

ALVIN MBAE.....1<sup>ST</sup> PLAINTIFF

ALICE MBIRO (THRO'ALVIN MBAE AS NEXT FRIEND).....2<sup>ND</sup> PLAINTIFF

WILSON MBAABU.....3<sup>RD</sup> PLAINTIFF

**VERSUS**

EDWIN NYAGA MUKATHA.....1<sup>ST</sup> DEFENDANT

MONICA K. MUGO.....2<sup>ND</sup> DEFENDANT

ANDERSON NKONGE MUGO.....3<sup>RD</sup> DEFENDANT

**RULING**

1. This matter was due for the inter-partes hearing of the Notice of Motion application dated **17<sup>th</sup> January, 2022** filed by the 1<sup>st</sup> and 3<sup>rd</sup> Plaintiffs/Applicants. Mr. Muriithi appeared for the Applicants while Mr. Kirimi appeared for the Respondents.

2. When the matter was called out, Mr. Muriithi learned counsel for the Applicants sought for the adoption of the consent dated **25<sup>th</sup> January, 2022** as an order of the court pursuant to Order 9 Rule 9 of the Civil Procedure Rules so that the firm of Basilio Gitonga, Muriithi & Associates Advocates can properly come on record for the Plaintiffs/Applicants in place of the firm of Charles Kariuki & Kiome Associates Advocates who were previously appearing for the Plaintiffs/Applicants. This is so because Judgment has already been entered in the matter.

3. Mr. Muriithi also applied to have the application dated **17<sup>th</sup> January, 2022** marked as withdrawn. Mr. Kirimi, learned counsel for the Respondents did not object to the application for withdrawal of the said application dated **17<sup>th</sup> January, 2022**.

4. I have considered the applications made by Mr. Muriithi learned counsel for the 1<sup>st</sup> and 3<sup>rd</sup> Plaintiffs/Applicants. I have also considered the sentiments made by Mr. Kirimi learned counsel for the Respondents.

5. There is no dispute that Judgment has been entered in this matter. Order 9 Rule 9 of the Civil Procedure Rules is in the following terms:

***“9. 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.***

***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.”***

6. In this case, a consent has been filed between the firm of Charles Kariuki & Kiome Associates Advocates who were previously on record for the Plaintiffs/Applicants and the firm of Basilio Gitonga, Muriithi & Associates Advocates, the proposed incoming advocates. Order 9

Rule 9 requires that such a consent be filed between the outgoing advocate and the proposed incoming advocate. It is therefore clear that the Applicants have complied with the provisions of Order 9 Rule 9 of the Civil Procedure Rules.

7. I have also noted that there is no objection to the application for the withdrawal of the application dated **17<sup>th</sup> January, 2022**. Order 25 Rules 1 and 2 of the Civil Procedure Rules allows a party to withdraw or discontinue a suit or application. I find that the two applications made by Mr. Muriithi learned counsel for the 1<sup>st</sup> and 3<sup>rd</sup> Plaintiffs/Applicants are merited and can be allowed.

8. In the result, I grant the following orders:

a) The consent dated **25<sup>th</sup> January, 2022** and filed on **26<sup>th</sup> January, 2022** between the firm of Charles Kariuki & Kiome Associates Advocates and Basilio Gitonga, Muriithi & Associates, Advocates is hereby adopted as an order of the court.

b) The firm of Basilio, Gitonga, Muriithi & Associates Advocates is granted leave to act for the 1<sup>st</sup> & 3<sup>rd</sup> Plaintiffs/Applicants in place of the firm of Charles Kariuki & Kiome Associates, Advocates.

c) The Notice of Motion application dated **17<sup>th</sup> January, 2022** is hereby marked as withdrawn with no order as to costs.

d) And since this matter is already concluded, and there is nothing pending, the file is returned to the registry with liberty to the parties to move the court when necessary.

9. Orders accordingly.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT CHUKA THIS 2ND DAY OF FEBRUARY, 2022 IN THE PRESENCE OF:**

**CA: MARTHA**

Kirimi for Respondent/Defendants

Muriithi for 1<sup>st</sup> & 3<sup>rd</sup> Plaintiffs/Applicants

**C. K. YANO,**

**JUDGE.**