



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT MOMBASA**

**ELC NO. 58 OF 2011**

**DANIEL TOKALI.....PLAINTIFF**

**VERSUS**

**ABDI HASSAN GURE & OTHERS.....DEFENDANTS**

**RULING**

***(Application filed by counsel before coming on record; application incompetent and struck out with costs)***

1. The application before me is that dated 18 November 2019 and filed on even date by the defendants in this suit through the law firm of M/s Stephen (Aka Suleiman) Macharia Kimani Advocate. They seek the following orders:-

(i) Spent.

(ii) The defendants (except defendant No.7) are allowed to deposit the decretal or security amount, or part thereof, in court instead of an interest earning account which has proven impossible to open, and is in any event an affront to the defendants' faith.

(iii) The court be pleased to vary the order of 13.6.2018 and consequently stay or set aside the notice to show cause given and issued on 11.9.2019.

(iv) Costs of this application be provided for.

2. The application is opposed.

3. To put matters into context, the plaintiff/respondent filed this suit in the year 2011 seeking orders inter alia to have the applicants evicted from the Plot No 427/III/MN which land is registered in the name of the respondent. The matter proceeded for hearing and judgment was delivered on 8 November 2017. The court allowed the respondent's suit and ordered the applicants to give vacant possession within 90 days of the judgment. The court also ordered each of the applicants to pay the sum of Kshs. 116,209/= in general damages and payment of an amount till possession was given. Aggrieved by the judgment, the applicants filed a Notice of Appeal and followed that up with an application for stay of execution pending appeal. The application was heard and ruling delivered on 13 June 2018. The court did grant a stay of execution of the order of vacant possession pending appeal, but on the money aspect of the decree, ordered the applicants to deposit the money awarded in the judgment "in an interest earning account in the joint names of the advocates for the applicants and the respondent's advocates within 60 days of this ruling." It seems as if this money was not deposited, and on 6 September 2019, the respondent filed a Notice for the applicants to show cause why they should not be arrested and committed to civil jail in satisfaction of the decree.

4. I observe that all this while, the applicants were being represented by the law firm of M/s B.O Odongo & Company Advocates. This application was filed on 18 November 2019 by the law firm of M/s Stephen (Aka Suleiman) Macharia Kimani. The record does show that on 19 November 2019, the law firm of Stephen (Aka Suleiman) Macharia Kimani filed a notice that the said firm has been appointed "to act alongside" the law firm of M/s B.O Odongo & Company Advocates. As far as I can see, this application has been filed by counsel who was not on record. If at all the appointment of M/s Stephen (Aka Suleiman) Macharia Kimani is to be upheld, it was an appointment that commenced on 19 November 2019. The said law firm could not therefore file an application on 18 November 2019 before first coming on record. For that reason, the application is incompetent for being filed by counsel who was not then on record and I have no option but to dismiss it with costs without going into the merits of it.

5. I need not make a decision on the Notice of Appointment of Advocate dated 18 November 2019 at this moment in time, but I have my doubts as to whether it is in conformity with the requirements of Order 9 Rule 9, which addresses how an advocate needs to come on record after judgment. I have neither seen an application to come on record, nor a consent filed between M/s B.O Odongo & Company Advocates and M/s Stephen (Aka Suleiman) Macharia Kimani Advocate. But as I have said, let me not dwell too much on that issue now. What we

cannot escape, whether or not the appointment of M/s Stephen (Aka Suleiman) Macharia Kimani was proper, is that such appointment could not have taken effect before 19 November 2019, yet this application was filed on 18 November 2019.

6. It is for that reason that the application is struck out with costs and I need not consider the merits of it.

7. Orders accordingly.

**DATED AND DELIVERED THIS 17<sup>TH</sup> DAY OF MAY 2021**

**JUSTICE MUNYAO SILA**

**JUDGE, ENVIRONMENT AND LAND COURT**

**AT MOMBASA**