



REPUBLIC OF KENYA



Moruri (Suing for and on Behalf of the Estate of Truphena Abisa Moruri) v Nyangena Hospital & another (Civil Appeal 13 of 2020) [2025] KEHC 1454 (KLR) (19 February 2025) (Ruling)

Neutral citation: [2025] KEHC 1454 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
CIVIL APPEAL 13 OF 2020
TA ODERA, J
FEBRUARY 19, 2025**

BETWEEN

DENNIS ISOE MORURI (SUING FOR AND ON BEHALF OF THE ESTATE OF TRUPHENA ABISA MORURI) APPELLANT

AND

NYANGENA HOSPITAL 1ST RESPONDENT

DAVID MOMANYI 2ND RESPONDENT

RULING

1. This matter came up on 21.2.25 for hearing of the application dated 15.10.24 when Mr. Samba for the respondent raised a preliminary objection on the grounds that M/S Kingoina Obuya advocates had not complied with order 9 rule 9 of the [Civil Procedure Rules](#) by seeking leave to come on record in place M/S Nyamweya Mamboleo & Co. who are on record for the Applicant Advocates to come on record.
2. Counsel for the Applicant Mr. Kingoina had not that M/S had no complied with order 9 rule 9 of the [Civil Procedure Rules](#) by seeking leave to come on record in place M/S Nyamweya Mamboleo & Co. who are on record for the Applicant.
3. Also, that order 42 Rule 6 of the [Civil Procedure Rules](#) provide that once stay has been granted then the aggrieved party can only appeal.
4. Counsel submitted that leave must be sought from Mr. Nyamweya under order 9 Rule 9 before M/s Kingoina Obuya advocates takes over the matter also that his firm and that of Mr. Nyamweya are holding Kshs. 2,000,000/= in a joint account and that counsel now wants to access the money without the knowledge of Mr. Nyamweya also that counsel has filed communication between himself and Mr. Nyamweya which is not a consent. He submitted that this court lacks Jurisdiction to grant the orders sought as it is functus officio.



5. Mr. Kingoina submitted that this court has inherent jurisdiction under Sections 1, 1A and 3A of the Civil Procedure Act and that this court has powers to rein in where an advocate had differed with his client. Further that order 9 Rule 9 is between an advocate and his client and that the failure to seek leave is a technicality which can be cured under Article 159 of the constitution.
6. On the appeal it was submitted that the court has jurisdiction to question parties why its orders have not been complied with and that they will demonstrate that the account does not exist.
7. In response Mr. Samba submitted that inherent jurisdiction does not apply where there is a specific provision of law like order 42 Rule 6 of the CPC.
8. Also, that the court became functus upon stay being granted and that setting aside is outside the jurisdiction of this court.

Order 9 Rule 9 of the civil procedure Rules provide that " Order

“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.”

9. The said rule was put in place to cure the mischief of parties who appointed advocates to conduct their cases then upon judgment being delivered they change advocates to avoid paying the previous advocates their fees. The same is couched in mandatory terms and so must be complied with. M/S Nyamweya Mambo Leo and Co. advocates are still on record and have neither been served with the application nor is there a consent from them. Article 159 of the constitution does not apply herein as the advocate has a right to fees and thus noncompliance with order 9 Rule 9 CPR will go to the root of his rights.
10. The return of service by Edward Obuya sworn on 21.1.25 which indicates that service was upon M/S Samba and Co. advocates for the appellant. There is no indication of service upon M/s Nyamweya Mamboleo and Co. Advocates for the respondent. I find that in the absence of such leave or service of the application no orders can issue. I order that the application be served upon M/s Nyamweya Mamboleo and Co. Advocates for determination first before any other issue can be dealt with. Men on 26.3.25 for directions.

T. A. ODERA

JUDGE

19.2.25

DELIVERED VIRTUALLY VIA TEAMS PLATFORM IN THE PRESENCE OF:

Kingoina for the applicant

Samba for the respondent

Court Assistant - Oigo

