



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
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**Tata Africa Holdings (K) Limited v Nyaguoka & 2 others (Civil Suit
12 of 2018) [2025] KEHC 2779 (KLR) (12 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 2779 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CIVIL SUIT 12 OF 2018
PN GICHOHI, J
MARCH 12, 2025**

BETWEEN

TATA AFRICA HOLDINGS (K) LIMITED PLAINTIFF

AND

JULIUS NYAKUNDI NYAGUOKA 1ST DEFENDANT

EMILY CHEPNGETICH 2ND DEFENDANT

KENYA TRACTORS AND EQUIPMENT LIMITED 3RD DEFENDANT

RULING

1. This is a ruling on the issue of representation raised by the Plaintiff's Advocate. The background is that the firm of Musyoki Mogaka & Company Advocates entered appearance for all the Defendants by the Memorandum of Appearance dated 17th April, 2018 and a filed a joint Defence and Counterclaim dated 22nd May, 2018 on even date.
2. When this matter came for hearing before this Court on 27th January, 2025, Mr. Shadrack Wambui Advocate informed the Court that he filed a Notice of Change of Advocates dated 6th August, 2024 to have the firm of Musyoki & Mogaka represent the 1st Defendant only, dropping of representation for the other Defendants.
3. Mr. Muma Advocate, appearing for the Plaintiff, took issue with the procedure in which counsel for the Defendants ceased acting for the 2nd and 3rd Defendant and argued that the Defendants' advocate ought to have filed an application to cease acting for the 2nd and 3rd Defendants and not merely file a Notice of Change of Advocates.



4. In regard to Change of Advocates, order 9 rule 5 of the [Civil Procedure Rules](#) provides that:-
- “A party suing or defending by an advocate shall be at liberty to change his advocate in any cause or matter, without an order for that purpose, but unless and until notice of any change of advocate is filed in the court in which such cause or matter is proceeding and served in accordance with rule 6, the former advocate shall, subject to rules 12 and 13 be considered the advocate of the party until the final conclusion of the cause or matter, including any review or appeal.”
5. Further, order 9 rule 13 on the other hand provides as follows:-
- (1) Where an advocate who has acted for a party in a cause or matter has ceased so to act and the party has not given notice of change in accordance with this Order, the advocate may on notice to be served on the party personally or by prepaid post letter addressed to his last- known place of address, unless the court otherwise directs, apply to the court by summons in chambers for an order to the effect that the advocate has ceased to be the advocate acting for the party in the cause or matter, and the court may make an order accordingly:
- Provided that, unless and until the advocate has—
- (a) served on every party to the cause or matter (not being a party in default as to entry of appearance) or served on such parties as the court may direct a copy of the said order; and
- (b) procured the order to be entered in the appropriate court; and
- (c) left at the said court a certificate signed by him that the order has been duly served as aforesaid, he shall (subject to this Order) be considered the advocate of the party to the final conclusion of the cause or matter including any review or appeal.
- (2) From and after the time when the order has been entered in the appropriate court, any document may be served on the party to whom the order relates by being filed in the appropriate court, unless and until that party either appoints another advocate or else gives such an address for service as is required of a party acting in person, and also complies with this Order relating to notice of appointment of an advocate or notice of intention to act in person.
- (3) Any order made under this rule shall not affect the rights of the advocate and the party as between themselves.
6. From the above cited Rules, it’s clear that an advocate files Notice of Change of Advocate when another advocate is coming on record for the party he was representing and before judgement is entered. In the event that particular party wishes to act in person then a Notice to Act in Person is duly filed in line with order 9 rule 8 of the [Civil Procedure Rules](#).
7. However, in instances where the Advocate acted for several parties and decided midway to act for a few or withdraws his representation all together, then an application contemplated under Order 9 Rule 13 must be filed in Court for him to cease acting for the said parties.
8. In this case, the Defendants’ advocate initially entered Appearance for all the three Defendants and mid-way, he decided to represent only the 1st Defendant. What the Advocate needed to do in the circumstances was to file an application ceasing acting for the 2nd and 3rd Defendants. The Notice of Change of Advocates filed is not the proper way of ceasing representation as per the [Civil Procedure Rules](#).



9. As it stands, the firm of Musyoki and Mogaka Advocates are still on record for all the Defendants until they obtain an order from this court ceasing acting for the said Defendants.
10. It should be noted that the process in order 9 rule 13 of the *Civil Procedure Rules* serves a bigger constitutional objective, as the enabler of the right to and effective legal representation of the litigants concerned and service of process of Court. The other party has a right to know the person upon whom to effect service of Court process otherwise, any other ad hoc arrangement between advocates and their clients would be an impediment to such rights.
11. Similarly, the right to legal counsel of choice becomes endangered where an advocate decided to cease acting without informing the client and taking appropriate legal steps to cease acting.
12. This Court appreciates that advocates have a right to cease acting for their clients for one reason or another as was reiterated by the Supreme Court in the case of *Sehmi & another v Tarabana Company Limited & 5 others; Mbugua Ng'ang'a & Co. Advocates* (Applicant) (Petition (Application) E033 of 2023) [2024] KESC 9 (KLR) (12 April 2024) (Ruling) (Being an application by M/s Mbugua Ng'ang'a & Co. Advocates to cease acting for the 2nd respondent) where Wanjala Justice of Supreme Court stated:-

“I opine that, a court of law cannot compel counsel to continue acting for a party, who has lost touch or interest in the matter for whatever reason.”
13. However, all the Advocate needed to do in this case was comply with the *Civil Procedure Rules* before ceasing acting but he failed to do so.
14. In the circumstances, this Court finds that the firm of Musyoki & Mogaka Advocates are on record for all the Defendants herein until a formal application is made for the said firm to cease acting for the 2nd and 3rd Defendants.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 12TH DAY OF MARCH , 2025.

PATRICIA GICHOHI

JUDGE

In the presence of:

Mr. Muma for Plaintiff

Ms Waithira for Mr. Shadrack Wambui for Defendants

Ruto, Court Assistant

