



REPUBLIC OF KENYA

KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT BUNGOMA

ELC CASE NO. 31 OF 2019

MILCAH NANGAMI.....PLAINTIFF

VERSUS

JULIUS KHAOYA WANYONYI.....1ST DEFENDANT

ELIUD WECHULI INGWE.....2ND DEFENDANT

ANTHONY MAKO.....3RD DEFENDANT

DISHON SERETO.....4TH DEFENDANT

NICK WAMALWA.....5TH DEFENDANT

WILBERFORCE WAMBULWA.....6TH DEFENDANT

GILBERT WANYONYI.....7TH DEFENDANT

DAVID BARAZA.....8TH DEFENDANT

FLORENCE SANGURA.....9TH DEFENDANT

STEPHEN WAFULA M'PALIA.....10TH DEFENDANT

MOSES BARASA.....11TH DEFENDANT

PHILIP MANGONE.....12TH DEFENDANT

FELISTER NEKESA WAFULA.....13TH DEFENDANT

ROBERT WALIAULA.....14TH DEFENDANT

M/S R. E. NYAMU & CO. ADVOCATES.....APPLICANT

RULING

Notwithstanding my long engagement with Counsel and litigants in our Courts, I am yet to get a direct answer from Counsel what exactly they mean when they cite **“lack of sufficient instructions”** as the reason for seeking to cease from acting for their clients. And not wanting to appear to be too intrusive, I usually leave the matter at that. In some cases, however, I have had success in arbitrating and getting Counsel to remain on record. This is informed mainly by the fact that most of the litigants in our Courts are lay persons. When their legal advisers desert them, for whatever reasons, they are left in unfamiliar territory. One of the consequences of this is that their access to justice may be compromised. I would however like to believe that the decision to cease acting in any matter is usually the last resort after all avenues at reconciliation have failed.

In this case, the opportunity to have an engagement with **MR NYAMU** and the plaintiff was lost because, thanks to the **COVID – 19** pandemic, the application was not canvassed in Open Court. Perhaps if it was, I would have attempted a settlement.

Order 9 Rule 13(1) of the **Civil Procedure Rules** provides as follows: -

13(1) “Where an advocate who has acted for a party in a cause or matter has ceased 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 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.”**

MR RICHARD E. NYAMU of the firm **R. E. NYAMU AND COMPANY ADVOCATES** (Applicant herein) has always acted for **MILCAH NANGAMI** (the plaintiff herein) from the time that this suit was filed on 18th December 2019. It would appear that the relationship between the Applicant and the plaintiff has taken a turn for the worse and the Applicant now wants to cease acting.

By a Notice of Motion dated 17th November 2020 and premised on Order 9 of the Civil Procedure Rules, the Applicant has sought the following orders: -

- 1. Spent**
- 2. That the firm of M/S R. E. NYAMU & CO ADVOCATES be granted leave to cease acting for the plaintiff MILCAH NANGAMI.**
- 3. That costs of this application be provided for.**

The application is based on the grounds set out therein and is also supported by the Applicant’s affidavit.

The gist of the application is that whereas the firm of **M/S NYAMU & COMPANY ADVOCATES** are on record in this matter for the plaintiff, it is in the interest of justice that they be allowed to cease acting for her due to lack of sufficient instructions. When the application was placed before me on 18th December 2020, I directed that it be served upon the plaintiff and the defendants and that it be canvassed by way of written submissions to be filed and served on or before January 2021. I also directed that the ruling would thereafter be delivered by way of electronic mail on 3rd February 2021. However, as has been the common practice particularly during this time when we are all grappling with the disruptions caused by the **COVID – 19** pandemic, the parties did not keep within the timelines as directed on 18th December 2020. They therefore sought more times to do so and the Court acceded to the request in keeping with the provisions of **Article 50(1)** of the **Constitution**. It is unfortunate therefore that even with the latitude allowed to the parties, both the plaintiff and defendants did not file any response to the application and it was not until 31st March 2021 that **MR ANWAR** holding brief for **MR NJIRI** for the defendants informed the Court that the defendants would not be opposing the application.

Whereas the Courts must remain sensitive and appreciate that the **COVID – 19** pandemic has had a profound effect on the justice system and in particular, on the resolution of cases, it is important that all the players in the justice system including the litigants play their roles in ensuring that justice is not delayed. **Article 159(2)(d)** of the **Constitution** behooves the Courts to dispense justice without delay. It is a fact that even the Judiciary itself is experiencing challenges as it tries to increase its up - take of technology. Hopefully, however, it is hoped that whatever gains the Judiciary makes in that respect will cascade down to the other players and in particular the litigants acting in person. It is apparent from the record herein that part of the delay in this matter was due to the fact that Counsel experienced challenges serving the other parties herein.

Having said so, the plaintiff and Counsel for the defendant were subsequently served as directed by this Court. And as I have already stated above, neither the plaintiff nor the defendants filed any response to the application. The defendants later informed the Court that they would not oppose the application. The application is therefore not opposed.

The term lack of **“sufficient instructions to enable us continue representing the plaintiff/Applicant”** which the Applicant has employed in seeking to cease acting for the plaintiff is a very wide and amorphous term. It is not clear exactly what **MR NYAMU** meant by **“sufficient instructions”** and if the plaintiff had responded to the application, perhaps this Court would have had an opportunity to hear from her as to why, having given instructions to her Counsel way back in December 2019 which enabled the filing of the pleadings herein, she has suddenly run out of instructions. If this matter had been heard orally, I would have attempted, as I sometimes do, to try and arbitrate between the two with a view to keeping their professional relationship alive. However, in the absence of any response from the plaintiff, this Court is entitled to conclude that their differences are irreconcilable and I must therefore grant Counsel the leave sought so that each can move on. Faced with a similar situation in the case of **NJUGUNA, KAHARI AND KIAI ADVOCATES .V. NAIROBI CITY COUNTY 2020**

eKLR, W. KARANJA J A stated thus: -

“In spite of service of the application on the appellant on 12th November 2020 and the respondents on 5th June 2020, none of them have opposed the application. When differences between Counsel and client become irreconcilable, just like in a marriage, the relationship becomes untenable and the chains that bind the two parties must be severed.”

In this case, this Court issued an order on 18th December 2020 that the plaintiff and defendants be served with the application and file their responses within 14 days of service. The record shows that on 5th February 2021, the plaintiff was personally served with the order at her home in **DUKA MOJA** area along the **KIMININI – NDALU** road by a process server of this Court by the name **JACKSON NYONGESA SIMIYU** who was well known to her. An affidavit of service dated 5th February 2021 was duly filed on 9th March 2021. The plaintiff has not responded to the application while the defendants informed the Court that they do not oppose it.

In the circumstances therefore, the Applicant’s Notice of Motion dated 17th November 2020 is allowed in the following terms: -

- 1. The firm of M/S R. E. NYAMU & COMPANY ADVOCATES is granted leave to cease acting for the plaintiff MILCAH NANGAMI.**
- 2. The Applicant shall procure this order and serve it upon all the parties herein within 14 days from the date of this ruling.**
- 3. The order shall also be reflected in the appropriate register by the Deputy Registrar.**
- 4. The Deputy Registrar shall also ensure that this ruling is served upon the plaintiff within 14 days as the Court does not have her email, telephone or postal contact.**
- 5. There shall be no orders as to costs.**

BOAZ N. OLAO.

J U D G E

24TH JUNE 2021.

RULING DATED, DELIVERED AND SIGNED AT BUNGOMA THIS 24TH DAY OF JUNE 2021

BY way of electronic mail in compliance with the **COVID – 19** pandemic guidelines.

BOAZ N. OLAO.

J U D G E

24TH JUNE 2021.