



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA

ELC CASE NO. 12 OF 2019

MILCAH NANGAMI.....PLAINTIFF

VERSUS

JULIUS KHAOYA WANYONYI.....1ST DEFENDANT

AZINGA ANGELLA MANGWANA.....2ND DEFENDANT

DICKSON MACRAE LITALI.....3RD DEFENDANT

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

RULING

Order 9 Rule 13(1) of the Civil Procedure Rules provides that: -

13(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 prepared 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 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."*

MR R. E. NYAMU (the Applicant herein) of the firm of **R. E. NYAMU & COMPANY ADVOCATES**, is on record for **MILCAH NANGAMI** (the plaintiff herein) having filed this suit on her behalf on 6th May 2019 seeking various remedies against the defendants with regard to the land parcel **NO BUNGOMA/ NDALU/28**. However, the advocate/client relationship between the Applicant and the plaintiff appears to have run into some turbulence.

I now have before me for my determination the Applicant's Notice of Motion dated 17th November 2020 and anchored on **Order 9** of the **Civil Procedure Rules** seeking 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 the application be provided for.**

The application is based on the grounds set out therein and is also supported by the Applicant's affidavit dated 17th November 2020.

When the application was placed before me on 18th December 2020, I directed that it be served upon the plaintiff and defendants together with written submissions within 14 days. The plaintiff and defendants would then have 14 days from the date of service to file their responses and submissions. The matter would then be mentioned on 19th January 2021 to confirm compliance and the ruling would be delivered on 3rd February 2021 by way of electronic mail in keeping with the **COVID – 19** pandemic guidelines.

Unfortunately, and has been the trend following the out – break of the **COVID – 19** pandemic, litigants and their legal advisers continue to experience numerous challenges in filing documents on line. This has adversely affected the expeditious disposal of cases and therefore, the time lines set out herein were not met. Mindful of the constitutional requirements under **Article 50** of the **Constitution** which protects a party's right to be heard, this Court will nonetheless turn a blind eye to the fact that it was not until April 2021 that the file was brought up for my further action. No doubt the challenges caused by the directive that documents be filed on line and fact that this Court was also closed for a few days after some of our staff tested positive for **COVID – 19** have contributed towards the delay in delivering this ruling. The same is regretted.

The gist of the application is that the Applicant does not have sufficient instructions to continue acting for the plaintiff hence the need to be granted leave to cease acting.

The record shows that the plaintiff was personally served with the application on 23rd November 2020 by one **JACKSON NYONGESA SIMIYU** a process server of this Court at her home at **DUKA MOJA** area along the **KIMININI – NDALU** road. She has however not filed any response to the application and on 31st March 2021, **MR ANWAR ADVOCATE** holding brief for **MR NJIRU ADVOCATE** for the defendants informed the Court that they would not be opposing the application.

I have considered the application, un – opposed as it is. The applicant seeks leave to cease from acting for the plaintiff on account of want of **“sufficient instructions”** which is a very wide and amorphous term. It could mean anything including failure by the instructing client to pay fees. What is clear, however, is that the client/Advocate relationship between the Applicant and the plaintiff has broken down and given the fact that the plaintiff did not give her side of what led to this state of affairs, there is very little that this Court can do even if there was room for salvaging the situation. Faced with a similar situation, **KARANJA J A stated as follows in the case of NJUGUNA, KAHARI AND KIAI ADVOCATES .V. NAIROBI CITY COUNTY [2020 eKLR]: -**

“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.”

Similarly, in this case, the plaintiff, though personally served with the application, did not file any response. If she had done so, I would have tried, as I have done before and with some measure of success, to attempt and narrow down their differences with a view to keeping the Applicant on record. This is because, once a litigant who has been enjoying the services of Counsel is left alone, then unless he or she engages another Counsel, justice may in fact be compromised. But then again, once the client/Advocate relationship has become toxic, there is very little that a Court can do other than to allow the parties to go their ways. That is because, the relationship must be anchored, inter alia, on confidence and mutual trust which in the circumstances of this case, appears to have dissipated. This Court must therefore allow the Applicant to disengage from these proceedings.

The up – shot of the above is that the Notice of Motion dated 17th November 2020 is hereby 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 from today as the Court does not have her email, telephone or postal address.**
- 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.