



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kericho Technical Institute v Finance Community Based Group & 3 others  
(Civil Suit 20 of 2013) [2025] KEHC 5844 (KLR) (8 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 5844 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
CIVIL SUIT 20 OF 2013**

**JK SERGON, J**

**MAY 8, 2025**

**BETWEEN**

**KERICHO TECHNICAL INSTITUTE ..... PLAINTIFF**

**AND**

**FINANCE COMMUNITY BASED GROUP ..... 1<sup>ST</sup> DEFENDANT**

**CHAIRMAN ..... 2<sup>ND</sup> DEFENDANT**

**TREASURER ..... 3<sup>RD</sup> DEFENDANT**

**SECRETARY ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. The application coming up for determination is a notice of motion dated 28th March, 2025 seeking the following orders;
  - (i) Spent.
  - (ii) That that this Honourable Court be pleased to strike out and/or expunge from the Court's record any application made by the firm of Mwita & Co. Advocates including the Notice To Show Cause dated 11th March, 2025.
  - (iii) That costs of this Application be provided for.
2. The application is supported by the grounds on the face of it and the supporting affidavit of Grace Mburu an Advocate of the High Court of Kenya practicing as an Associate in the firm of Mitey & Associates Advocates, well conversant with the facts hence competent to swear the affidavit.
3. She avers that she has the authority of the Plaintiff/Respondent to swear this affidavit.



4. She avers that on 20th March, 2025, they received a Notice To Show Cause dated 11th March, 2025 from one Wesley Ngeno a process server via Whatsapp on their office Mobile Number 0725421849 which was addressed to their client, the Plaintiff/Applicant herein from the firm of Mwita & Co. Advocates of P.O Box 553-20200 Kericho.
5. She avers that according to the pleadings in their possession, it is the firm of LJA Associates of P.O Box 10070-00100 Nairobi who are on record for the Defendants/Respondents.
6. She avers that their firm has not been served with any order granting the said firm leave to come on record in place of LJA Associates or a consent recorded and filed between the firm of Mwita & Co. Advocates and LJA Associates and that it is therefore puzzling how the firm of Mwita & Co. Advocates were granted the permission to make any application in Court without being properly on record.
7. She avers that it is only fair and just in the circumstances, that any applications including that of the Notice to Show Cause be expunged from the record.
8. The Defendants/Applicants in the suit and the respondents herein filed a replying affidavit which was sworn by Evalyne Ngeno Koko the 1st Defendant/Applicant's Legal & Compliance Manager, having the authority of the other Defendants/Applicants to swear this affidavit on their behalf.
9. She avers that the application dated 28th March, 2025 is not made in good faith but meant to delay the final conclusion of this matter which began way back in the year 2013.
10. She avers that contrary to the allegations by the Plaintiff/Respondent that their current Advocates on record, the firm of M/s Mwita & Co. Advocates are not properly on record, it is clear that the Plaintiff/Respondent has not acquainted itself with the Court file before making such wild allegations, on 6th September, 2024, the advocates on record did file a Consent to come on record under Order 9 Rule 1, taking over the matter from our previous advocates, the firm of LJA Associates LLP Advocates, she attached a copy of the Consent dated 23rd August 2024 evidencing as much. She further avers that the Plaintiff/Respondent is glaringly trying to mislead this court that they have never known the presence of their Advocates on record in the file even after having accepted service of numerous documents from the said advocates with respect to this matter.
11. She further avers that on the 24th January 2025, the Plaintiff/Respondent was served with the Application dated 22nd January 2025 giving rise to the Notice To Show Cause herein and they acknowledged receipt of both the Application and the hearing Notice as is evidenced by the affidavit of service annexed hereto and marked "NK 3" which clearly shows the Plaintiff/Respondent having stamped on the face of the application and Notice.
12. She avers that the doctrine of estoppel stops the Plaintiff/Respondent from denying that which it has always been acquainted to and has never raised any objection, only for it to now turn around and state that the firm of Ms. Mwita & Co. Advocates are not properly on record. She therefore reiterated that the instant application is only brought with the aim to disenfranchise the ultimate enjoyment of the Defendant/Applicant fruits of the judgment and orders of the Court issued on the 26th February, 2025 in the absence of the Plaintiff/Respondent who was duly aware of the proceedings of court.
13. The Defendants/Applicants in the suit and the respondents herein filed grounds of opposition in response to the Applicant's application dated 28th March 2025 on the following grounds: -
14.
  - (i) That the application dated 28th March 2025 has not established a prima facie case with any chances of success to warrant a grant of the reliefs sought. The said application is



incompetent, misconceived and blatantly brought to unnecessarily delay the process of executing this Court's Orders issued on the 26th February, 2025.

- 15.
- (ii) That the Application herein in any event cannot be allowed for the reason that the Plaintiff is starved of the prerogative to seek the Orders sought by dint of the doctrine of estoppel, having acceded, acquiescence and acceptance service of all the documents by the firm of M/s Mwita & Co. Advocates.
16. The matter came up for inter partes hearing and the learned counsel for the respondents stated that they filed a replying affidavit and grounds of objection in response to the instant application and that there was no need to file written submissions, the matter was subsequently set down for hearing.
17. Having considered the instant application, replying affidavit and grounds of opposition, the sole issue for determination is whether to strike out and/or expunge from the Court's record any application made by the firm of Mwita & Co. Advocates including the Notice to Show Cause dated 11th March, 2025. This court finds that there is on record a consent dated 6.9.2024 filed by the firm of Mwita & Co. Advocates, the advocates on record to come on record under Order 9 Rule 1, taking over the matter from the previous advocates, the firm of LJA Associates LLP Advocates. It is therefore this court's finding that the firm of Mwita & Co. Advocates are properly on record.
18. In light of the foregoing, the notice of motion dated 28th March, 2025 is hereby dismissed with each party bearing their own costs.

**DELIVERED, SIGNED AND DATED AT KERICHO THIS 8TH DAY OF MAY, 2025.**

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**J.K. SERGON**

**JUDGE**

In the Presence of:-

C/Assistant – Rutoh

Mwita for the Respondent

Miss Mburu holding brief for Mitey for applicant

