



**Registered Trustees Missions in Action Nakuru Baby Orphanage v Rigiri & another  
(Civil Case E002 of 2023) [2025] KEHC 6059 (KLR) (Civ) (12 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6059 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL CASE E002 OF 2023**

**HI ONG'UDI, J**

**MAY 12, 2025**

**BETWEEN**

**REGISTERED TRUSTEES MISSIONS IN ACTION NAKURU BABY  
ORPHANAGE ..... PLAINTIFF**

**AND**

**DAMARIS RIGIRI ..... 1<sup>ST</sup> DEFENDANT**

**CYRUS KIVUTI ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. Upon perusal of the record herein I note that in the Ruling delivered on 18<sup>th</sup> December, 2024 there were certain conditions which the Plaintiff/Applicant herein had to comply with. That necessitated the filing of the Notice of Motion dated 27<sup>th</sup> December, 2024. Initially Mr. Tanga had no objection to the firm of K.O.M advocates coming on record for the plaintiff/applicant. A consent was even recorded and adopted by the court. However, before the proceedings could be wound up Mr. Tanga informed the court that he was rescinding the consent on the defendants' instructions. The court then set aside the consent.
2. It was directed that the said application be heard interparties. This was on 21<sup>st</sup> January, 2025. The court was also informed that the defendant had appealed against the Ruling delivered on 18<sup>th</sup> December, 2024. I am yet to see the Notice of Appeal and/or grounds of Appeal. All I know is that there is no order staying the proceedings before this court.
3. In the replying affidavit by Damaris Rigiri Budulica (1<sup>st</sup> defendant/Respondent) sworn on 24<sup>th</sup> February, 2025 all she says about the issue of representation of the plaintiff/applicant by the firm of K.O.M is that the application is incompetent and bad in law. The reason she gives is that the plaintiff/applicant did not serve its former advocate with the application which is true.



4. This is a matter that was filed on 9<sup>th</sup> February, 2023 by the firm of Robert Ndubi and company advocates Nakuru. After compliance with all requirements the matter was fixed for hearing on 7<sup>th</sup> May, 2024, in the presence of both plaintiff's and defendants' counsel. Come the hearing date the plaintiff and its counsel were not in court, while the defendants and their advocates and witnesses were present. There was no reason given for the absence of the plaintiff and its counsel. The court dismissed the plaintiff's case for want of prosecution.
5. Upto today the plaintiff's former advocate has not taken any steps to reinstate the plaintiff's suit. Secondly the said counsel has not raised any issue about the plaintiff's representation in the matter. It is now a year since the dismissal. The plaintiff has a right to legal representation. Now that the firm of K.O.M advocates have complied with the directions under paragraph 40(ii) of the Ruling of 18<sup>th</sup> December, 2024 I really do not see any genuine reason to deny the plaintiff legal representation of an advocate of their choice. The firm of K.O.M is hereby granted leave to represent the plaintiff.
6. However, concerning the order in respect of bank accounts the required documents are yet to be filed. On the issue of properties complained of which are mainly motor vehicles, the 1<sup>st</sup> defendant/respondent in her replying affidavit has responded to the claim and annexed a copy of her late husband's WILL bequeathing the properties to her. This is a serious issue though Mr. Ong'iti told the court that the replying affidavit had been filed late and should be expunged.
7. Owing to the nature of the issue raised I admit the said replying affidavit and grant leave to the plaintiff/applicant to file a further affidavit within 14 days, and also file and serve a report on the current status of the accounts. Once served with the report on the accounts the defendant/applicants will have 14 days within which to file and serve a supplementary affidavit addressing that issue only.
8. Parties to file brief submissions limited to 4 pages only on the issue of properties and accounts within 20 days after the filing of the supplementary affidavit.
9. In view of the fact that the issue of properties and accounts is not yet sorted out I hereby issue a temporary injunction restraining the defendants, their agents or employees from disposing of and or selling all the motor vehicles mentioned in the plaintiff/applicant's application and affidavit dated 27<sup>th</sup> December, 2024, pending the determination of these issues.
10. This matter will be mentioned on 21<sup>st</sup> July, 2025 to confirm compliance and further orders as this court will be proceeding on leave from mid-June 2025.

Orders accordingly

**DELIVERED VIRTUALLY, DATED AND SIGNED THIS 12<sup>TH</sup> DAY OF MAY, 2025 IN OPEN COURT AT NAKURU.**

**H. I. ONG'UDI**

**JUDGE**

