



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT ELDORET

ELC CASE NO. 520 OF 2012

ISAAC KIPKEMBOI CHESHIRE.....1ST PLAINTIFF
ESTATE OF KIMUTAI CHESHIRE.....2ND PLAINTIFF
ISAAC KIMUTAI.....3RD PLAINTIFF
MARY CHEPKOECH CHESHIRE.....4TH PLAINTIFF
JONAH KIBIWOTT CHESHIRE.....5TH PLAINTIFF

VERSUS

JOSEPH KIMITEI KWAMBAL.....1ST DEFENDANT
JOHN MALAN SAWE.....2ND DEFENDANT
GROWELL FARM LTD.....3RD DEFENDANT
THE LAND REGISTRAR, UASIN GISHU.....4TH DEFENDANT

AND

ROSE CHERUIYOT RONO.....1ST INTERESTED PARTY
HENRY BARMAO.....2ND INTERESTED PARTY
KIBET KANGOGO.....3RD INTERESTED PARTY
KIMAIYO RONO.....4TH INTERESTED PARTY

RULING

1. When this matter came up for mention on the 22nd March, 2021 for directions, **Mr Wafula**, learned counsel for the 1st defendant, raised an objection to the Notice of Appointment of Advocates dated the 17th March, 2021 filed by M/s Betty Koech & Co. Advocates and served upon himself, indicating that the counsel had been appointed to act for the 4th Plaintiff alongside M/s Chelang'a Chambers Advocates. The learned counsel submitted that there is no provision in the **Civil Procedure Rules** upon which the notice could be based. Mr Wafula prayed for the said notice to be struck out and be expunged from the record, as there is likely to be confusion on which firm will serve or be served with court processes, and the counsel to address the court on behalf of the 4th plaintiff.
2. The learned counsel for the other parties present, and the 3rd plaintiff who is in person, indicated to the court that they have no objection to the 4th plaintiff being represented by more than one advocate. That on her part, M/s Koech submitted that the objection raised by Mr. Wafula is diversionary as the only party who can protest is the 4th plaintiff or Mr. Chelanga advocate.
3. The court has considered the submissions by counsel on the matter, and after perusing the record come to the following determinations;

(A) That the Notice of Appointment of Advocates dated the 17th March, 2021 filed by M/s Betty Koech & Company Advocates indicates that **“the 4th plaintiff herein has appointed the firm of M/S BETTY KOECH, NJUGUNA & CO. ADVOCATES to act for and on her behalf in this matter alongside the firm of M/S CHELANG’A CHAMBERS ADVOCATES.”** The notice is drawn, filed and signed by M/s Betty Koech & Co. Advocates. That the counsel described in the body of the notice is obviously different from the one who drew, filed and signed at the end. That filed with the said notice is a Notice of Motion under Certificate of Urgency dated the 17th March, 2021 drawn and filed by M/s Betty Koech & Co. Advocates for the 4th plaintiff. That I have upon perusing the record taken note of the following;

- (a) That earlier on, **M/s Chelang’a & Associates** had filed their Notice of Change of Advocates dated the 11th January, 2016 coming on record for the 1st, 2nd, 4th and 5th plaintiffs in place of M/s Ngigi Mbugua & Company Advocates.
- (b) That subsequent filings like the Further Amended Plaint dated the 13th June, 2018 are indicated as drawn and filed by **Chelang’a Kihungi & Associates Advocates** for the 2nd, 4th and 5th plaintiffs.
- (c) That the processes filed later on, like the Notice of Motion dated the 22nd July 2020 is drawn and filed by **Chelang’a Chambers Advocates** for the 2nd, 4th and 5th plaintiffs.

That as pointed out by Mr Wafula, learned counsel for the 1st defendant, there is real possibility of confusion on which counsel, between the two on record for the 4th plaintiff, should draw, file and serve court processes on her behalf, and which firm should be served by the other parties and or their advocates. That compounding the foregoing is the different names of the first firm of advocates on record for the 4th plaintiff, and the correct name of the second firm. That these are matters that the 4th plaintiff should have her counsel of choice clarify by filing and serving the appropriate notices within seven (7) days.

(B) That as to whether or not a party who already has a counsel on record can appoint another, or put conversely, whether a counsel can come on record for a party who already has another counsel on record, the court recently addressed a similar matter in **Eldoret ELC No. 599 of 2012, Samuel K Rono & 32 Others v Joel Komen & 32 Others**, and held as follows;

“... That in any case, two or more advocates can represent the same Party or parties in a suit in view of Rule 7 of the Advocates (Practice) Rules. In the case of Belgo Holdings Limited Vs Wilson Birir [2010] eKLR, the court held that “A litigant is entitled to representation by an Advocate of his choice. It is clear that Order 111 Rule 1 and 8 each speak of “an advocate”. In my view, however, it is possible for a party to be represented in court by more than one Advocate. This view derives its force and effect from Rule 7(1) of the Advocates (Practice) Rules, which states as follows;

“An advocate may act for a client in a matter in which he knows or has reason to believe that another advocate is then acting for that client only with the consent of that other advocate.”

In the absence of such consent, the second advocate would have no locus to act for such a client. It would appear from Rules 1 and 8 of Order 111, as well as Rule 7 of the Advocates (Practice) Rules, that the Law envisages the appointment of one advocate but allows such an Advocate to be joined by another advocate with the consent of the former.”

That the foregoing leaves no doubt that the person or persons who could object to the second counsel coming on record for the 4th plaintiff is the client herself, or the counsel already on record. That there is no objection received from either of the two. That even though the consent of M/s Chelang’a Chambers Advocates has not been exhibited, I take note that the notice and motion dated the 17th March, 2021 indicates that they were to be served to that firm among others. I will therefore take it that they had no objection to the second counsel coming on record for the 4th Plaintiff until otherwise indicated. That the court do not need to say any more on the question of whether or not a party can have more than one counsel on record, as the extract from the decision set out above is clear and sufficient.

(C) That in the **Belgo Holdings case (supra)**, the court went further and held that;

“In this matter there are two advocates on record at the same time. Does it mean that any time some communication was to issue to the Defendant’s advocate the two firms have to be served? The same question arises in similar fashion if there were more than two firms on record for the same litigant. This would certainly make litigation more expensive to all the parties involved including those that have only one firm of advocates representing them, which would be prejudicial to the latter both in terms of time and money. For the above reasons, it is my considered opinion that a litigant should have one firm on record, but these can be joined by others in terms of Rule 7 (1) of The Advocates (Practice) Rules. I therefore direct that the defendants’ advocates in this matter do consult with their clients to determine which of them should be the leading counsel on record, to whom reference concerning this case should be made, and who will be responsible for taxing the party and party costs, and which of them would be regarded as assisting counsel.”

That I am wholly in agreement with the above position and the same should apply to the two firms of advocates on record for the 4th plaintiff in the instant suit. That the two firms should file the appropriate notices clarifying specifically, which one between them is the leading and assisting advocates, which firm draws, files, serves, and receives court processes on behalf of the 4th plaintiff. That as the situation is now, the other parties/counsel may wonder whether they will be expected to serve their replies and submission in respect on the Notice of Motion dated the 17th March, 2021 upon the first counsel to come on record for the 4th Plaintiff, in addition to the advocates who drew and filed it.

(D) That from the foregoing, I find Mr. Wafula's objection to the 4th plaintiff having a second counsel on record unmeritorious and the same is rejected. That however, Mr. Wafula's objection has accorded the court the opportunity to peruse the record and give the above directions, and for that I thank him.

Orders accordingly.

DATED AND DELIVERED VIRTUALLY THIS 2ND DAY OF JUNE, 2021.

S. M. KIBUNJA

ENVIRONMENT AND LAND COURT JUDGE

IN THE PRESENCE OF:

PLAINTIFFS: 3RD PLAINTIFF PRESENT.

DEFENDANTS: ABSENT.

INTERESTED PARTIES: ABSENT.

COUNSEL: M/S KOECH FOR 4TH PLAINTIFF AND HOLDING BRIEF FOR CHELANGA FOR 2ND, 4TH AND 5TH PLAINTIFFS.

MR. WAFULA FOR 1ST DEFENDANT AND MR. MOMANYI FOR NYAMBEGERA FOR INTERESTED PARTIES.

COURT ASSISTANT: CHRISTINE