



Sasah Contractors Limited v Jaramogi Oginga Odinga University of Science & Technology (Civil Case E002 of 2023) [2024] KEHC 7010 (KLR) (12 June 2024) (Ruling)

Neutral citation: [2024] KEHC 7010 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CIVIL CASE E002 OF 2023
DO OGEMBO, J
JUNE 12, 2024**

BETWEEN

SASAH CONTRACTORS LIMITED PLAINTIFF

AND

JARAMOGI OGINGA ODINGA UNIVERSITY OF SCIENCE & TECHNOLOGY DEFENDANT

RULING

1. From the record of the proceedings herein, the counsel who is on record as entering appearance for the Defendant is Ivor Aska Nyamita. The memorandum of appearance was filed herein on 13/9/2023. On 22/5/2024, Ms. Katwa came in for the Defendant but is holding brief for Ms. Nyamita. Ms. Katwa has henceforth used the same address of service as Ms. Nyamita, giving the impression that they act together and are seized of the same instructions by the same party.
2. Mr. Onsongo first came into this case on 22/5/2024 as working together with Ms. Katwa. By this date, Mr. Onsongo had not filed any pleading in his name or in the name of Ms. Nyamita.
3. Mr. Onsongo filed a Notice of Appointment of Advocate herein dated 30/5/2024. He has proceeded further to file an Application in his name, Richard B. O. Onsongo Advocate, dated 31/5/2024. This is the basis upon which the plaintiff has sought for directions on the issue of representation of the Defendant. I have heard the parties on this issue of representation.
4. There is no doubt that there is judgment on record herein. If so, Order 9 Rule 9 demands that in case of change of Advocate, the incoming Advocate can only come on record with leave of the court and with Notice of the Parties. In our case, counsel has filed a Notice of Appointment and not a Notice of Change.
5. Notice of Appointment of Advocates is regulated by order 9 Rule 7. It is relevant where a party has previously acted in person and now appoints an advocate to act for him in the matter. In our instant



case, the Defendant has all along been represented by counsel. The consequence of this is that the Notice of Appointment filed by Mr. Onsongo dated 30/5/2024 is irregular and is of no effect.

6. This issue is important in view of the pleadings that have been filed by both Ms. Nyamita and Mr. Onsongo. Whereas Ms. Nyamita's firm have gone ahead and filed their submissions, Mr. Onsongo, has filed the application dated 31/5/2024 seeking amongst other prayers, orders of stay of these proceedings and setting aside of all the orders initially made herein including the judgment. This, to me does not point to the two law firms acting in tandem and with the same instructions from the same party.
7. In the circumstances, it is even not possible for this court to determine who would be the lead counsel for the Defendant since the two law firms seem to be having conflicting instructions, though from the same client.
8. This court is of the view that nothing would have been easier for Mr. Onsongo to join in the defence of the Defendant through the same address if indeed they both represent the Defendant and have the same directions. It is for these reasons that this court is persuaded that Mr. Onsongo is not properly on record for the Defendant and that the Notice of Appointment of Advocate dated 30/5/2024 and the Application filed by the law firm and dated 31/5/2024 are incompetent and have no force of law. I struck the same out. It is so ordered.

Dated, Signed and Delivered this 12th Day of June, 2024.

D. O. OGEMBO

JUDGE

PARA 12.

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SLAYA HC CIVIL CASE NO. E002 OF 2023 RULING 1 | Page

