



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT THIKA

ELC APPEAL NO 8 OF 2020

SERAH WANJIRU KUNG’U.....APPELLANT

=VERSUS=

PETER MUNYUA KIMANI.....RESPONDENT

RULING

1. Judgment in this appeal was rendered by Gacheru J on 29/7/2021. She made a finding in favour of the appellant, Serah Wanjiru Kung’u. Subsequently, the respondent, Peter Munyua Kimani, brought an application dated 6/8/2021 seeking orders of stay of execution pending hearing and determination of an appeal by the Court of Appeal. On 16/8/2021, Gacheru J disposed the application for stay in the following terms:

- “(i) Notice of motion dated 6th August 2021 and the certificate of urgency to be heard during the vacation is considered.***
- (ii) Stay of execution is granted for 30 days.***
- (iii) Let the applicant file the substantive application for stay of execution at the Court of Appeal.”***

2. Subsequently, the respondent brought a subsequent notice of motion dated 21/9/2021 seeking the following verbatim orders:

a) Spent

b) Spent

c) That the period of validity of the order of stay of execution of the judgment, decree and the consequential orders issued on 29/7/2021 and all other consequential execution proceedings arising therefrom be extended for a further period of 30 days.

d) That costs of this application be provided for.

3. The said application dated 21/9/2021 is one of the two applications falling for determination in this ruling. The second application falling for determination is the notice of motion by the appellant, dated 22/9/2021, in which the appellant seeks an order reviewing/amending the judgement dated 29/7/2021 to capture the correct name of the appellant to read **SERAH WANJIRU KUNG’U** as contained in the memorandum of appeal instead of **SERAH WANJIKU KUNGU**.

4. The appellant’s application was conceded to by the respondent during the virtual canvassing of the two applications. I will therefore grant it in terms of prayers 2 and 4. I will proceed to consider one of the key grounds of objection presented in opposition to the respondent’s application dated 21/9/2021, which I think will dispose the application without venturing into its merits.

5. One of the grounds upon which the appellant opposed the respondent’s application was that the advocates who filed the application dated 21/9/2021 had not obtained leave to come on record. The said ground of objection was not responded to by the respondent. The court record shows that the respondent was at the time of delivery of judgment in this appeal represented by the firm of **M K Chebii & Company Advocates**. Subsequent to delivery of judgment, the firm of **Ng’ang’a Nyaga & Company Advocates** filed a notice of change of advocates. The court record does not bear any prior leave or consent relating to that particular purported notice of change of advocates. Further, the record shows that at the time of bringing the application dated 21/9/2021, the firm of **Wokabi Mathenge & Company Advocates** filed a

notice of appointment of advocates dated 21/9/2021. There is similarly no evidence of any prior leave or consent or prior notice to act in person.

6. It does therefore emerge that the respondent elected to take a casual approach to the issue of change of advocates post-judgment, notwithstanding the fact that the application he was initiating focused on the diligence of his legal representatives. It does also emerge that the respondent did not and has not up to this point, bothered to comply with the mandatory requirements of Order 9 rule 9 of the Civil Procedure Rules. The purpose of the above mandatory framework is to ensure orderly administration of justice. In the absence of prior leave or consent, the respondent's application dated 21/9/2021 was filed by a law firm that was not properly on record. The result is that the said application is incurably defective and stands to be struck out without venturing into its merits. Consequently, the appellant's objection is valid and is upheld without venturing into the merits of the application.

7. Consequently, the respondent's application dated 21/9/2021 and the appellant's application dated 22/9/2021 are disposed as follows:-

a) The respondent's application dated 21/9/2021 is struck out for having been filed by a law firm that was not properly on record. The respondent shall bear the costs of the application.

b) The appellant's application dated 22/9/2021 is allowed in terms of prayer 2 in the sense that the name of the appellant shall read SERAH WANJIRU KUNG'U as captured in the memorandum of appeal and not SERAH WANJIKU KUNGU as captured in the judgment herein. There shall be no order as to costs of the application.

c) The Court Registry shall forthwith avail certified copies of the proceedings and judgment, which are ready at this point, to the parties, upon payment of the requisite court fees.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 18TH DAY OF OCTOBER 2021

B M EBOSO

JUDGE

In the presence of: -

Mr Karanja for the Appellant

Mr Mathenge for the Respondent

Court Assistant: Lucy Muthoni

B M EBOSO

JUDGE