



**Kweyu v Chore & another (Environment and Land Case
4 of 2019) [2025] KEELC 5110 (KLR) (30 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 5110 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT AND LAND CASE 4 OF 2019**

**A NYUKURI, J
JUNE 30, 2025**

BETWEEN

MARY AWINO KWEYU PLAINTIFF

AND

LAWRENCE MMATA CHORE 1ST DEFENDANT

MELISA MUHONJA MMATA 2ND DEFENDANT

RULING

1. Before court is a notice of motion dated 7th October, 2024 filed by the firm of Kasamani & Associates Advocates and brought under the provisions of Order 9 rule 9 of the *Civil Procedure Rules* and Article 152(d) of the *Constitution* seeking leave for the firm of Kasamani & Associates Advocates to come on record for the 1st defendant in place of Oscar Wachilonga & Associates Advocates.
2. The application is predicated on the affidavits sworn by Vincent Mukoya Kasamani, counsel practicing in the firm of Kasamani & Associates Advocates sworn on 7th October, 2024 and 12th October, 2024. The applicant's case is that he has received instructions to represent the 1st defendant and that the service effected on the defendants was improper as they were served by registered post. That he had been instructed by the 1st defendant who undertook to pay him Kshs. 500,000/- as legal fees.
3. The application was opposed. Mary Awino Kweyu filed a replying affidavit dated 5th November, 2024. She stated that the application was an abuse of the *Civil Procedure Rules* and a violation of the *Oaths and Statutory Declarations Act*. That on 11th October, 2024 the respondent's advocate was served with the instant application and court order via email sent by one Mr. Kasamani Lutta of the email address of lxxxxxxx@gmail.com and used phone number +254722xxx111 to call the respondent's advocate. That the same phone number was used by Mr. Kasamani Lutta to serve a supplementary affidavit and correspondence.



4. She stated that a search in the Law Society of Kenya for “Kasamani” yielded the names and photographs of Kasamani Charles Lutta of P. 105/1281/82 and the photograph of practicing status of Mukoya Vincent Richard Kasamani of P. 105/10047/13. That Mr. Kasamani Charles Lutta was struck off the Roll of advocates while Mukoya Vincent Richard Kasamani formally practices under the law firm of Katua Muindi & Co. Advocates as his place of work.
5. She further averred that Kasamani Lutta and his aforesaid email displayed the photo of Kasamani Charles Lutta as shown in LSK online portal, who is the owner of phone number +254722XXX111. According to her, the signatures in the supporting affidavit of 7th October, 2024 and the signatures in the supplementary affidavit of 12th October, 2024 have no resemblance although the deponent of both affidavits is stated to be Vincent Mukoya Kasamani hence it shows that they were not signed by the same person showing misconduct of impersonation. It was her case that the instructions by the 1st defendant showed that the advocate was to take over the case on behalf of the defendants as opposed to one defendant. In responding to the allegation of non-service and alleged violation of the 1st defendant’s right to be heard, she argued that the 1st defendant moved to circumvent the order of 4th July, 2019 by filing notice to act in person and that from February, 2019, the 2nd defendant has been acting in person. She maintained that service by postal address is procedural and proper service.
6. The respondent also filed grounds of opposition dated 5th November, 2024, wherein she stated that the supporting affidavit was fatally defective and offends Section 5 of the [Oaths and Statutory Declarations Act](#) regarding the place of taking oath as it does not state the place of making the affidavit. She further stated that the application was a culmination of violation of Sections 31, 39, 40, 41 and 42 of the [Advocates Act](#) as the substantive advocate receiving instructions is Kasamani Lutta of Admission No. P.105/1281/X2, email address IXXXXXXXX@gmail.com and phone number +254722XXX111, based in Kakamega town and struck off the Roll of Advocates, employing a business name of Kasamani & Associates Advocates as a litigation vehicle to aid him practice law. That in allowing the prayer sought, the court will be ratifying violations of the above provisions as it will be allowing unqualified person to act as an advocate as no permission of LSK has been given to Charles Lutta Kasamani to practice as an advocate. That Vincent Mukoya Kasamani’s place of work is Katua Muindi & Co. Advocates.
7. In a rejoinder, Vincent Mukoya Kasamani filed what he referred to as “response to replying affidavit and grounds of opposition” dated 20th January, 2025. He stated that he is an advocate trading as Kasamani & Associates Advocates. That in 2024, he held a practicing certificate No. LSK/2024/12XX9.
8. He further stated that Charles Lutta Kasamani on successful application for restoration to the Roll of advocates commenced tutelage under him on 18th July, 2024. That despite being struck off the Roll and being restored, Mr. Kasamani is an advocate of over 42 years in practice hence he is competent to take instructions relating to legal practice and that Mr. Charles Lutta Kasamani scope of handling this case was limited to collecting data and recording the client’s statements. He insisted that he is the one with full instructions in this suit and has appeared in this matter. It was his opinion that the 1st defendant had a constitutional right to representation by an advocate of his choice which should not be subject to litigation.
9. Parties filed written submissions in respect of their arguments. On record are submissions filed by the 1st defendant dated 6th February, 2025 and the application by the plaintiff dated 17th February, 2025 both of which this court has duly considered.



Analysis and Determination.

10. The court has duly considered the application, response and submissions. Only one issue arises for determination, which is whether the 1st defendant ought to be granted leave to change his advocates from Oscar Wachilonga to Kasamani & Associates Advocates, Riadha House, Suit 21 Afrodrome Road, P.O. Box 61XX0-00200 Nairobi.
11. Legal representation is a constitutional right and a party has a right to appoint an advocate of their choice to represent them.
12. Order 9 rule 9 of the *Civil Procedure Rules* provides as follows:

“When there is a change of advocate, or when a party decides to act in person having previously engaged an advocate, after judgment has been passed, such change or intention to act in person shall not be effected without an order of the Court—

 - (a) upon an application with notice to all the parties; or
 - (b) upon a consent filed between the outgoing advocate and the proposed incoming advocate or party intending to act in person as the case may be.”
13. Therefore, where a party was represented by an advocate up to delivery of judgment and wishes to change their advocate or act in person after judgment, such change or intention to act in person can only take effect with leave of court.
14. In this case, the contention by the plaintiff is that Charles Lutta Kasamani who is struck off the Roll of advocates is using a law firm known as Kasamani & Associates Advocates to practice law. That Mr. Vincent Mukoya Kasamani’s place of work is Katua Muindi & Company Advocates. In a rejoinder, Vincent Mukoya Kasamani insists that he is the one instructed although Mr. Charles Lutta’s role was to gather data and take the client’s statements as he is under tutelage.
15. From the documents on record, it is clear that Mr. Charles Lutta Kasamani was struck off the Roll of advocates on 19th September, 2016 and in 2024, he sought from the Advocates Disciplinary Tribunal to be restored to the Roll of Advocates. The Tribunal allowed the application subject to mandatory fulfillment of two conditions namely; to undertake tutelage under supervision of a practicing advocate of clean record of not less than 10 years standing approval by the LSK for a period of 24 months; to comply with regulation 11 of the *Law Society of Kenya (Continuing Professional Development) Rules* 2014 and obtain a total of ten CPD points during the tutelage program with at least four points thereof being on professional Ethics and Etiquette in the legal profession. It was upon compliance that the Tribunal would then recommend to the Chief Justice to have Mr. Kasamani restored to the Roll of Advocates but as things stand he is still struck off the Roll of Advocates.
16. In the letter of the LSK dated 27th January, 2025, the LSK maintained that Mr. Charles Lutta Kasamani had not fulfilled the aforesaid conditions and still stands struck off and that his purported practice of law should be subject to Criminal Proceedings. The LSK further maintained that there is no advocate known as Kasamani Vincent Lutta. The applicant attached the practicing certificate dated 15th March, 2024 for the person named Kasamani Vincent Lutta and stated that this is the person who is said to have received instructions from the 1st defendant and who intends to represent him. Yet the evidence from the Law Society of Kenya to the effect that Kassamani Vincent Lutta is not an advocate according to their records has not been denied or controverted. The Law Society of Kenya Search engine is a public record and this court by virtue of section 60 (1) (k) of the *Evidence Act*, takes judicial notice of



all the names of all advocates and other persons authorized by law to appear or act before it. Having considered the records held by the Law Society of Kenya, it is clear that there is no advocate known as Kasamani Vincent Lutta.

17. It therefore follows that the practicing certificate for Kasamani Vincent Lutta presented herein by Kasamani & Associates Advocates registered on 17th November 2020, is not authentic, its credibility is questionable and cannot be relied upon.
18. Therefore, in view of the fact that the person named Kasamani Vincent Lutta is not an advocate as per the records of the Law Society of Kenya, and since the basis of the applicant's representation of the 1st defendant is the attached practicing certificate dated 15th March 2024, it will be unlawful for such person to represent the 1st defendant as he is not authorized to practice law. Hence, I find and hold that the application dated 7th October 2024, lacks merit and the same is hereby dismissed with costs to the plaintiff.
19. It is so ordered

DATED, SIGNED AND DELIVERED AT KAKAMEGA IN OPEN COURT/VIRTUALLY THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM THIS 30TH DAY OF JUNE, 2025

A. NYUKURI

JUDGE

In the presence of;

Mr. Mukoya for the applicant

Mr. Balusi for the respondent.

Court Assistant: M. Nguyai

