

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KITALE

LAND CASE NO. 240 OF 2012

EDDAH WANJIRU MBURU.....PLAINTIFF

VERSUS

TAYARI FARMERS CO LTD.....1ST DEFENDANT

DORCAS WANJIRU MWANGI.....2ND DEFENDANT

RULING

1. Long ago before this court was created a plaint was filed in the high court by the law firm going by the name of Ikua Mwangi & Company Advocates acting for the named plaintiff and the instant suit was thereby commenced.
2. On **12/10/2021** an application was filed by Polo Kawere & Co. Advocates acting for the plaintiff, in which the plaintiff sought orders that she be struck out of the proceedings herein, which order would if granted mark the suit's denouement. The grounds for the application were that the plaintiff, though appointed administrator of the estate of the deceased, had never given any person instructions to institute the instant suit. She pointed out that in the certificate of confirmation of grant dated **3/10/2008**, the suit property was not listed and Ms Kawere well emphasized on this fact when the matter came up before court on **19/10/2021**. On that date Ms Kawere also made it clear that she was not applying to withdraw the suit which the plaintiff was in fact disowning in the application. Consequently the court being convinced that the applicant and the plaintiff were one and the same person granted the applicant's application dated **5/10/2021** in terms of prayers no **1, 2, 3** and **4**, effectively terminating the suit. Upon the plaintiff disowning the suit filed on her behalf, the only issue of who would pay costs of the suit insisted upon by Mr Karanja Mbugua for the defendant remained to be determined. The court invited the parties to submissions on the issue and ordered that the firm of Mr. Frank Mwangi, Advocate and Mr. Ikua, Advocate be served with the submissions in this matter as their names featured in the proceedings in the suit as appearing for the plaintiffs.
3. The applicant filed her submissions on **28/10/2021** and the defendants filed theirs on **5/11/2021**.
4. Through her counsel, the applicant cited **Section 27** of the **Civil Procedure Act** and the case of **Supermarine Handling Services Ltd Vs Kenya Revenue Authority Civil Appeal No 85 of 2006**.
5. She submitted that the firm of Frank Mwangi & Co Advocates had never been instructed by the plaintiff to act on her behalf, and that despite service on that firm of the application dated **5/10/2021** the said firm chose not to respond or appear in court for the prosecution of the application.
6. It is proper to consider that the application does not enjoin the firm of Frank Mwangi & Co Advocates and does not require them to respond to the issue of costs. It just contains a prayer that the costs of the application be provided for.
7. **Article 50** of the **Constitution** provides for the fair hearing of any dispute that a person may have before an impartial court of law or other body. The applicant and the defendants are before me having been named in these proceedings and duly summoned by process in the proper manner. The legal firm or firms mentioned have not been properly summoned to answer any issue or claim in these proceedings.
8. In the circumstances of this case the court can not order a person who has not been called upon to respond to an application that does not name him as a respondent and which does not seek to have him pay costs of a suit to pay the costs of the suit as proposed herein. The theories that have been put forward by the defendant's submissions as to the process of mutation of M/s Ikua Mwangi & Co. Advocates into other entities can not be delved into herein as neither that firm nor its owners and the entities it mutated into are not parties herein.
9. The applicant puts it very well she she states in her submissions that in the alternative of being ordered to pay the costs of the suit, the firm of Frank Mwangi & Co Advocates should disclose who their instructing client was so that whoever gave them the instructions to file suit should be pursued for costs by the defendants if this court exercises its discretion in favour of the defendants. The court can only deal with the named parties in such an application. It is the opinion of this court that the issue of who should pay the costs of the suit is not ripe for determination yet. Also, if I order the defendants to pay the costs of the instant application for the reason that it was successful, that may be unfair as the alleged unauthorized filing of the suit was not their fault.
10. Consequently, this court will confine itself to **prayer no (5)** of the application dated **5/10/2021**. I hereby order that each party will bear their own costs of the said application.

DATED, SIGNED AND DELIVERED AT NAKURU VIA ELECTRONIC MAIL ON THIS 15TH DAY OF DECEMBER, 2021.

MWANGI NJORGE

JUDGE, ELC, NAKURU.