



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL AND TAX DIVISION

CIVIL SUIT NO. 748 OF 2003

MOHAN MEAKIN (K) LTD.....1ST PLAINTIFF/APPLICANT

GALOT INTERNATIONAL LTD.....2ND PLAINTIFF/APPLICANT

VERSUS

NATIONAL BANK OF KENYA LTD.....DEFENDANT/RESPONDENT

RULING

1. The ruling relates to an application dated 23rd July 2019, brought under the provisions of; Order 9 Rule 9 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act. It is supported by an affidavit dated 23rd July 2019, sworn by Mohan Galot, the Chairman of the Board of directors and the Governing director of the Applicants.

2. The Applicants seeks for orders that;

a) Leave be granted for the firm of; M/s George Gilbert Advocates to come on record for the plaintiffs in place of the firm of; M/s Kinoti Kibe & Co. Advocates.

b) Costs of the application be in the cause.

3. The Applicants aver that, judgment was delivered in this matter on 8th April 2016, whereby the parties were directed to agree and appoint an independent accountant to take accounts between them. Consequently, the Applicants have changed their lawyer to follow up on that issue of accounts.

4. That, as judgment has been entered they need court's leave to change the lawyers. In the circumstances, they cannot file a notice of change of advocates, without the leave and it is in the interest of justice that the orders sought be granted, as no prejudice will be suffered by the Respondent and/or the or outgoing firm of Advocates.

5. However, the application was opposed by the firm of; Kinoti & Kibe Co. Advocates vide a replying affidavit dated; 22nd October 2019, sworn by Kibe Mungai, an advocate of the High Court of Kenya, practicing in the said firm. He averred that their law firm came on record for the Plaintiffs, on the Plaintiffs' instructions and handled their suit through the hearing to the judgment stage.

6. That he continued handling the post judgment including on the applications; dated 7th November 2016 and 31st January 2017. However, despite having competently represented the Applicants they have decided to change their advocates to the firm of; George Gilbert Advocates, before formally ending their Advocate-client relationship with the firm of; Kinoti & Kibe Co. Advocates, in respect to the work already done and contrary to the assertions of the applicant.

7. However, the Applicants filed a further affidavit dated 21st November 2019, similarly, sworn by Mohan Galot, who averred that, the replying affidavit raise no issues as to warrant the court's favour. That, the Advocate-client relationship between the said firm and the Plaintiffs had ended causing the plaintiffs to change their lawyers.

8. Further, that, the Plaintiffs have made a decision that they no longer want to be represented by the said firm and instructed the new firm to continue with the representation. Thus, any representation made in court by the firm of; Kinoti & Kibe Co. Advocates, purportedly on behalf of the plaintiffs shall not be associated with the Plaintiffs, and will be amounting to an advocate acting without instructions, therefore, are null and void.

9. He reiterated that parties have a constitutional right to be represented by an advocate of their choice and that a party's right to legal representation takes precedence, over the provisions of; Order 9 Rule 9 of the Civil Procedure Rules.

10. I have considered the application and the arguments advanced and I find that, the provisions of Article 50(2)(g) of the Constitution, 2010, states that; "every accused person (by extension litigant) is entitled to; choose and be represented by an Advocate".

11. Similarly, the procedural provisions of; Order 9 Rule 9 of the Civil Procedure Rules 2010 provides that;

"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".

12. The reason advanced by the Respondent is that their legal fees has not been settled. However, the provision of; Order 9 Rule 9 of the Civil Procedure Rules 2010, do not provide the payment of legal fees as a ground for grant of leave envisaged thereunder. Further the recovery of an advocates' legal fees, is provided for under the sections 44 to 52 of the Advocates Act and Advocates Remuneration Order. Generally, in the absence of agreement on payment of the costs, the Advocate has to file a bill of costs for taxation. The objection to change of Advocates and/or leave as sought for herein will not resolve the issue of costs

13. Finally, the provisions of the Constitution as stated above, referred to above, grants a party a right to be represented by an Advocate of his choice and being supreme to other statutory and procedural provisions, they take precedence. (see **Delphis bank Limited Vs Channan Singh Chatthe & 6 others (2005) eKLR**).

14. **In the given circumstances I find that the application herein has merit and I allow it in terms of prayers (2) and (3).**

15. **It is so ordered.**

Dated, delivered and signed on this 20th day of January, 2020.

GRACE L NZIOKA

JUDGE

In the presence of:

Mr. Gilbert-----for the Plaintiff/Applicants

Mr. Njoba for Mr.

Kibe -----for Advocate/Respondent

Dennis-----Court Assistance