



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CIVIL CASE NO. 29B OF 2015**

SWK (MINOR).....1<sup>ST</sup> PETITIONER

LWK (MINOR).....2<sup>ND</sup> PETITIONER

GEORGE KING'IRI WANJOHI.....3<sup>RD</sup> PETITIONER

**-VERSUS-**

**A.C.K. ST. JAMES CATHEDRAL KIAMBU.....1<sup>ST</sup> RESPONDENT**

**PARAGON PROPERTY CONSULTANTS LTD...2<sup>ND</sup> RESPONDENT**

**COUNTY GOVERNMENT OF KIAMBU.....3<sup>RD</sup> RESPONDENT**

**RULING**

1) The subject matter of this ruling is the motion dated 13<sup>th</sup> June 2019 taken out by George King'iri Wanjohi, the 3<sup>rd</sup> petitioner herein. In the aforesaid motion, the 3<sup>rd</sup> petitioner sought for the orders issued on 14<sup>th</sup> June 2017 to be set aside and for the suit to be reinstated. The motion is supported by the affidavit sworn by the 3<sup>rd</sup> petitioner. The 1<sup>st</sup> respondent filed the replying affidavit of James N. Mungai to oppose the motion. The firm of S. G. Wachira & Co. Advocates filed the affidavit of Ephraim Murigo to also oppose the 3<sup>rd</sup> petitioner's motion.

2) The main ground put forward by the applicant is that he was not served with the respondent's application dated 23<sup>rd</sup> March 2017. It was pointed out that the same was served upon the firm of S. G. Wachira & CO. Advocates which the 3<sup>rd</sup> petitioner had not given instructions to represent him.

3) The aforesaid firm of advocates stated that it was given instructions to appear for the petitioners by an organization known as **Urban Landlords and Tenants Association of Kenya (ULTAK)**.

4) Ephraim Murigo, the secretary General of ULTAK deponed that he received the 3<sup>rd</sup> petitioner in his office on 24.8.2015 upon which he agreed to be a paid up member of ULTAK, a body said to be with a mandate to assist landlords and Tenants in Kenya who are not economically able to litigate on rental disputes.

5) Mr. Ephraim Murigo further deponed that the 3<sup>rd</sup> petitioner requested for assistance from ULTAK and hence the firm of S. G. Wachira & Co. Advocates was then appointed to act for the petitioners free of charge.

6) The 1<sup>st</sup> respondent urged this court to dismiss the 3<sup>rd</sup> petitioner's application arguing that the same lacked merit. It was pointed out that the firm of S. G. Wachira & Co. Advocates had been appointed by the 3<sup>rd</sup> petitioner to appear hence his assertion that the aforesaid firm did not have his instructions is false. Both deponents annexed to their respective affidavits a copy of the notice of appointment dated 24<sup>th</sup> August 2015 filed

by the firm of S. G. Wachira & Co. Advocates.

7) I have analysed the arguments put forward by both sides. The main issue which will determine this motion is the answer to the question as to whether or not the firm of S. G. Wachira & Co. Advocates had instructions from the 3rd petitioner to appear for him. It is not in dispute that the aforesaid firm of advocates filed a notice of appointment as appearing for the petitioners. However, it would appear from the affidavit of Ephraim Murigo that the aforesaid firm was given verbal instructions to appear for the petitioners in this matter. There is no evidence to show that the 3rd petitioner ever visited the offices of the law firm of S. G. Wachira & Co. Advocates.

8) Ephraim Murigo has deponed in the supporting affidavit that the 3rd petitioner is a paid up member of ULTAK. However there is no documentary evidence to establish that fact. It is not in dispute that the 3rd petitioner did not personally give instructions to the firm of S. G. Wachira & Co. Advocates to appear for him in this matter.

9) I am persuaded by the 3<sup>rd</sup> petitioner's submission that he did not give such instructions therefore the aforesaid Law firm cannot be said to have instructions to appear for the 3rd petitioner.

10) In the end, I am convinced that the motion dated 23<sup>rd</sup> March 2017 was not served upon the 3rd petitioner. The applicant is therefore entitled to seek for an order setting aside the orders allowing the motion dated 23.3.2017 as unopposed made on 14.6.2017. Consequently, the orders made on 14th June 2017 are set aside. The motion dated 23<sup>rd</sup> March 2017 is reinstated together with the suit to be heard denovo. Each party to meet its own costs.

**Dated, Signed and Delivered at Nairobi this 9<sup>th</sup> day of October, 2019.**

.....

**J. K. SERGON**

**JUDGE**

In the presence of:

.....for the petitioner

.....for the respondent