



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 2015 OF 2012

IN THE MATTER OF THE ESTATE OF JOSHUA ORWA OJODEH (DECEASED)

ULDA ALOO OJODEHOBJECTOR/APPLICANT

VERSUS

MARY AWUOR OJODEH.....PETITIONER/RESPONDENT

RULING

1. Under **Order 9 rule 9** of the **Civil Procedure Rules**:-

“9. Where 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

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(a) upon an application with notice to all 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.”

2. This matter was decided on 20th May 2015 when the estate of the deceased Joshua Orwa Ojodeh was distributed to his beneficiaries/dependants. At the time, the objector was represented by the firm of M/s Kanyangi & Company Advocates.

3. On 10th May 2017 the firm of Kimathi Wanjohi Muli Advocates filed this motion under **sections 1A, 1B and 3A** of the **Civil Procedure Act** and **Order 9 rule 9** of the **Civil Procedure Rules** seeking leave to come on record for the objector in place of the firm of M/s Kanyangi & Co. Advocates. The affidavit to support the application was sworn by Muli O. Mutua advocate on behalf of the firm, saying that they had been instructed by the objector to take over the conduct of the matter from the previous advocates. The advocates for the petitioner/respondent filed grounds of opposition to oppose the application. Their case was that the application was incurably defective, lacked merit and was an abuse of the process of the court.

4. The court asked counsel to file and serve written submissions on the application. Otieno Okeyo & Co. Advocates for the petitioner/respondent filed submissions to state that the application could not be granted because it had not been served on the firm of M/s Kanyangi & Co. Advocates who are on record for the objector, and neither was there a consent between Kimathi Wanjohi Muli Advocates and M/s Kanyangi & Co. Advocates.

5. There is no evidence on record that the application was served on the firm of M/s Kanyangi & Co. Advocates, although on the face the application it was intended to be served on the Advocates. Further, there is no evidence of a consent between the firm of Kimathi Wanjohi Muli Advocates and M/s Kanyangi & Co. Advocates allowing the new firm to come on record for the objector. It follows that the conditions in **Order 9 rule 9(a)** and **(b)** of the **Civil Procedure Rules** have not been fulfilled.

6. That being the case, the proposed change of advocates cannot be sanctioned by the court. The motion is dismissed with costs.

DATED and SIGNED at NAIROBI 11TH OCTOBER 2018

A.O. MUCHELULE

JUDGE

DATED and DELIVERED at NAIROBI 17TH OCTOBER 2018

J.N. ONYIEGO

JUDGE