



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KITALE

LAND CASE NO. 46 OF 2011

SAMWEL KIPTOO ROP.....1ST PLAINTIFF

MOSES KIBIWOTT LIMO.....2ND PLAINTIFF

VERSUS

BEATRICE NAKHUMICHA KHAOYA.....1ST DEFENDANT

PATRICK KOOKO KALENDA.....2ND DEFENDANT

DISTRICT LAND REGISTRAR TRANS-NZOIA DISTRICT.....3RD DEFENDANT

HENRY MUTAMBO WEPUKHULU.....4TH DEFENDANT

RULING

1. An objection is raised by Prof. Sifuna and supported by Mr. Wanyonyi, to the effect that Mr. Bungei should not be allowed to represent the plaintiff as he has no authority. The genesis of that objection is the Notice of Appointment dated **23/7/2018** which states that the firm of “*Ms. Bungei & Murgor & Co. Advocates*” have been appointed by the plaintiffs, **Samuel Kiptoo Rop** and **Moses Kibiwott Limo** “*to act for them alongside the firm of Arap Mitei & Co. Advocates*”. The Notice states at its foot that “*HENCEFORTH, his (sic) address of service for purposes of this suit shall be care of the said Advocates*”.

2. Prof. Sifuna posits that there is no such a thing as “*to act alongside*” in **Order 9 Rule 5** of the Rules.

3. The objection is a surprising as its timing - coming when the greater part of this suit has been heard and only one of two witnesses remain to testify, and Mr. Bungei’s reliance on the fact of his previous participation to rebut Prof. Sifuna’s objection was countered by Prof. Sifuna’s averment that any illegality should be nipped in the bud at the earliest opportunity.

4. This court now doubts that it is handling a bud but a fully bloomed flower in the form of Mr. Bungei’s representation of the persons he now calls his clients as these proceedings have progressed a great deal.

5. A perusal of **Order 9 Rule 5** relied on by Prof. Sifuna shows that:-

(1) A party shall be at liberty to change Advocates without the court’s order for purpose.

(2) Unless the Notice of Change of Advocate is filed and served on every other party in the suit by the party changing Advocates, the former Advocate shall, unless removed from record at the instance of another under Order 9 Rule 12 or withdraws from acting under Order 9 Rule 13, be deemed to be the Advocate for the party until the final conclusion of the matter including review or appeal.

6. Mr. Bungei cites lack of complaint from the firm of Arap Mitei & Co. Advocates as evidence that his representation of the plaintiffs is proper. He claimed that the record would bear him out that previously he has only gone on record as “*acting alongside*” Mr. Mitei or “*holding brief for*” Mr. Mitei in this matter depending on whether Mr. Mitei was able to attend or not and that Mr. Mitei remains the lead counsel in the matter.

7. This court finds no irregularity in the appointment of two or more firms of Advocates to act for a party, for he may engage as many

Advocates as he can possibly depending on the depth of his pocket or his actual interest in the matter.

8. Is Mr. Bungei out of order in this matter?

9. The Notice of Appointment is not accompanied by a Notice of Change. In this court's view the filing of a Notice of Change implies the incoming Advocate will replace the original Advocate and the filing of a Notice of Appointment merely appoints an Advocate to a matter whether there is another Advocate already on the record or not. In such an instance of filing of a Notice of Appointment when there is another Advocate on the record, it is this court's considered opinion that it is not barred by the rules, and that such an incoming firm would only "*act alongside*" the original firm.

10. Mr. Bungei had before the Notice of his firm's appointment on **10/4/2018** indicated to court that he is holding brief for Mr. Mitei. That was the date PW1 testified and the hearing commenced. Mr. Mitei himself is on record as having represented (without the company of Mr. Bungei) the plaintiffs on **24/7/2018**, **11/10/2018** and **25/10/2018**. On **20/11/2018**, Mr. Bungei appeared alone and did not state that he "*acts alongside*" Mr. Mitei. On **5/3/2019** Mr. Mitei appeared and stated that he appears with Mr. Bungei in the matter. Mr. Mitei re-examined PW1 on **5/3/2019** in this matter. That was a date after the filing of a Notice of Appointment by the firm of Bungei & Murgor & Co. Advocates dated **23/7/2018**.

11. In this court's view, Mr. Mitei is aware of the presence of Mr. Bungei in this matter. How the plaintiff deals with the two firms of Advocates is relevant only to him and not this court.

12. Concerning non-service of the title 1st DMFI-7 which sparked off the representation war, I must deal with it individually, just as any other objection will be dealt with on a case by case basis, and note that Prof. Sifuna was unable to show that the firm of Arap Mitei & Co., which he considers properly on record, had been served with the bundle.

13. In the end the objection is disallowed.

14. Hearing to proceed.

Dated, signed and delivered at Kitale on this 6th day of October, 2020.

MWANGI NJOROGE

JUDGE, ELC KITALE.

6/10/2020

Coram:

Before - Mwangi Njoroge, Judge

Court Assistant - Collins

Prof. Sifuna for 1st defendant

Mr. Bungei for plaintiffs

Mr. Wanyonyi for 2nd defendant

Mr. Sambu for 4th defendant

N/A for 3rd defendant

COURT

Ruling read in open court.

MWANGI NJOROGE

JUDGE, ELC, KITALE.