



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NYERI**

**ELC APPEAL NO. 17 OF 2016**

**JAMES NDONYU NJOGU.....APPLICANT**

**VERSUS**

**MURIUKI MACHARIA.....RESPONDENT**

**RULING**

I have considered the Notice of Motion and the supporting affidavit sworn by Nyiha Advocates on 12<sup>th</sup> October 2020. I have also looked at the applicable law. **Order 9 Rule 9 Civil Procedure Rules** which is the applicable law provides that:-

*“When there is a change of advocate, or where 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”*

The applicant filed grounds in support of the said application and in paragraph 3 thereof, he stated as follows:-

*“3. That the applicant filed an application dated 13<sup>th</sup> December 2019 seeking review of the aforesaid judgment through the firm of M/S Nyiha Mukoma & Company Advocates which was struck out on 24<sup>th</sup> day of September because the proposed Advocates were not properly on record despite filing a consent with the previous firm of Advocates to come on record on their behalf”.*

The applicant at paragraph 4 of the said grounds in support of the application deponed as follows:-

*“4. That by the ruling of 24<sup>th</sup> September 2020, this Honourable Court held that the said firm of Nyiha, Mukoma & Co. Advocates needs to obtain the leave of this Honourable Court before it can file the Notice of change of Advocates and proceed with the matter”.*

The aforesaid averments have not been denied or opposed by the respondent despite service having been effected. The applicant also at paragraph 5 of the supporting affidavit stated as follows:-

*“5. That we filed a consent dated 6<sup>th</sup> February 2020 where the firm of M/S Magua & Mbatha Advocates consented to my firm coming on record for the Applicant. (Annexed hereto and marked “JN -1 “is a copy of the said consent)”.*

As I have said elsewhere in this ruling that the averments in the application and the supporting affidavit have not been opposed and/or controverted. Consequently, the application dated 12<sup>th</sup> October 2020 is merited and the same is allowed as prayed. The costs of the application shall be costs in the cause.

**READ, DELIVERED and SIGNED via video conferencing (teams) this 19<sup>th</sup> day of November, 2020.**

.....

**E.C. CHERONO**

**ELC JUDGE**

In the presence of:

1. Mr. Mbogo – Court clerk

2. Banji for the Applicant.