



REPUBLIC OF KENYA



**Mutia v Nduvi & 2 others (Environment and Land Case E005 of 2023)
[2025] KEELC 7761 (KLR) (12 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 7761 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ENVIRONMENT AND LAND CASE E005 OF 2023
EO OBAGA, J
NOVEMBER 12, 2025**

BETWEEN

PATRICK MULWA MUTIA PLAINTIFF

AND

ISAAC MULI NDUVI 1ST DEFENDANT

NORMAN MBAI 2ND DEFENDANT

AGATHA WAYUA MWILU 3RD DEFENDANT

RULING

1. This is a ruling in respect of a Preliminary Objection dated 20th May, 2025 by the Plaintiff on the following grounds:
 1. That the firm of W. M. Kithuka & Co. Advocates improperly came on record for the Defendants after judgment had already been entered, without first obtaining leave of court or filing a consent between outgoing and incoming advocates, contrary to Order 9 Rule 9 of the Civil Procedure Rules, 2010;
 2. That the said firm has no legal standing to file or prosecute any pleadings in this matter, and accordingly, the reply to the Plaintiff's objection and any related documents filed thereafter are incompetent and ought to be expunged from the record;
 3. That in view of this, the Plaintiff's Notice of Objection to the Bill of Costs stands unopposed in law and should be deemed as such for purposes of taxation and further proceedings.
2. The Plaintiff had filed a suit against the Defendants in which he sought the following reliefs.
 - a. An order of adopting the surveyor's report dated 9th November, 2021.



- b. An order of a permanent injunction restraining the Defendant from encroaching or in any other manner interfering with the Plaintiff's land parcel number Makueni/Kako/2131 and the public road adjacent to it.
 - c. An order of eviction against the Defendants compelling them to remove the offending structures that have encroached into the Plaintiff's parcel of land number Makueni/Kakko/2131 and the public road adjacent to it.
 - d. Costs of the suit.
3. The Defendants raised a preliminary objection on the grounds that the court had no jurisdiction to entertain the suit as it related to a boundary dispute. In a ruling delivered on 18th September, 2024, the court upheld the preliminary objection and proceeded to strike out the Plaintiff's suit with costs to the Defendants.
 4. The Defendants proceeded to file a party and party bill of costs for taxation. Before the bill of costs could be taxed, the Plaintiff filed the preliminary objection which is the subject of this ruling.
 5. The parties were directed to file written submissions in respect of the preliminary objection. The Plaintiff filed his submissions dated 25th September, 2025. The Defendants filed their submissions dated 30th September, 2025.
 6. The Plaintiff submitted that the firm of W. M. Kithuka & Co. Advocates filed a notice of change of advocates contrary to the provisions of Order 9 Rule 9 of the Civil Procedure Rules. The Plaintiff further submitted that any change of advocates which does not comply with Order 9 Rule 9 of the Civil Procedure Rules is void and incapable of founding any subsequent pleadings.
 7. The Plaintiff relied on the case of *Kabiru & Another –vs- Amboso (2024) KEHC 14287 (14 November, 2024)* where the High Court struck out an application filed by an advocate who had come on record post judgment without complying with order 9 Rule 9 of the Civil Procedure Rules. The Plaintiff further submitted that it was held in this case that Article 159 of *the Constitution* could not be invoked to cure such an anomaly.
 8. The Plaintiff submitted that the Defendants' attempt to cure the anomaly by filing a consent taking over the matter from the previous lawyers after the preliminary objection had been raised cannot assist as that cannot operate retroactively.
 9. The Defendants submitted that what is being raised by the Plaintiff is not a pure point of law. The defendants concede that the notice of change of advocates was improperly filed without compliance with Order 9 Rule 9 of the Civil Procedure Rules and that the consent taking over the matter from the previous lawyers was done after the preliminary objection had been raised. They submitted that these are procedural technicalities which can be cured under Article 159 of *the Constitution*.
 10. The Defendants submitted that no prejudice will be suffered by the Plaintiff and that allowing the preliminary objection will only delay the execution process.
 11. I have carefully considered the preliminary objection by the Plaintiff. The record of the proceedings in this file show that when the Plaintiff's suit was struck out, it is the firm of Kithuka and Nafula advocates who were on record for the Defendants. The party and party bill of costs was filed by the same firm of Kithuka & Nafula on 18th October, 2024.
 12. The notice of change of advocates from Kithuka & Nafula advocates was filed on 2nd April, 2025. There was therefore nothing wrong with the bill which was filed by Kithuka & Nafula advocates. The



Plaintiff had no basis to object to the filing of the bill. The Plaintiff's objection could only be valid with respect from pleadings filed beginning from the Notice of Change of advocates dated 2nd April, 2025 onwards.

13. Any objection arising from the properly filed party and party bill of costs should have been handled by the Deputy Registrar who was seized with jurisdiction to handle any matter relating to a filed bill unless in exceptional circumstances like an issue on retainer being raised which was not the case herein.
14. The mere fact that there was no compliance with Order 9 Rule 9 of the Civil Procedure Rules cannot dispose of this matter as the filed bill was filed by the advocates who were on record when the suit was struck out. The Defendants though belatedly have complied with Order 9 Rule 9 of the Civil Procedure Rules. Even if the court were to agree with the Plaintiff, still the bill which is filed will stand. This will therefore not dispose of the matter herein.
15. The mischief which was intended to be cured by Order 9 Rule 9 of the Civil Procedure Rules was to avoid situations where a party engage an advocate upto judgment stage only for there to be a notice of intention to act in person or a change of advocate to avoid paying costs of the advocate who did the case to judgment stage. In the instant case there is no prejudice which the firm of Kithuka & Nafula would have suffered. In any case that anomaly was cured albeit abit late. I therefore find that the Plaintiff's preliminary objection lacks merit. It is dismissed with no orders as to costs because the Defendants were partly to blame for its filing. I direct that the party and party bill of costs be placed before the Deputy Registrar to deal with the same.

It is so ordered.

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HON. E. O. OBAGA

JUDGE

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 12TH DAY OF NOVEMBER, 2025.

In the Presence of:

Ms. Kyalo for Defendants.

Court assistant – Steve Musyoki

