

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAROK
SUCCESSION CAUSE CASE NO. E024 OF 2021
(CORAM: HON. CHARLES M. KARIUKI – J)

**IN THE MATTER OF THE ESTATE OF LESHAN NICK OLE
LETOLUO (DECEASED)**
**SALOME NAANYU LESHAN LETOLUO, JOY NAMUNYAK
LESHAN, and LESHAN KUNTAI, suing as the Administrator of
The late NICK OLE LETOLUO..... ADMINISTRATORS**
-VERSUS-
PURITY SOMOINE-MEITAMEI.....OBJECTOR

RULING

1. By summons dated 16/10/2025, the Applicant Leshen Kuntai seeks orders;
 - I) That status quo orders issued on 11/10/2025 be set aside.*
 - II) That the Application dated 9/10/2025 be struck out to reaffirm the court's authority and uphold the integrity of the proceedings. The court is to declare that Mongeri & Company Advocates is not properly on record for Purity Somoine Meitamei, inter alia.*
2. The Application is supported by the grounds of the chamber summons and reiterated by the affidavit of Leshan Kuntai, sworn on 16/10/2025.
3. The Applicant also filed a supplementary affidavit sworn on 27/10/2025. In rejoinder, the Respondent filed a Replying Affidavit

sworn on 31/10/2025. The Application is based on the fact that, on 9/10/2025, the firm of Mongeri & Company Advocates filed an application, and on 11/10/2025, the court issued orders of status quo. By the date of lodging of the said Application, the said firm of Mongeri & Co. Advocates was not properly on record contrary to Order 9 Rule 5 of the Civil Procedure Rules (Cap 21) Laws of Kenya.

4. This is because the court delivered Judgment on 18/7/2025, and by then, the said Advocate was not the one who represented the Respondent in the instant matter, but another firm. Such procedural technicalities can nullify court orders, underscoring the need for meticulous adherence to legal protocols by court officials and advocates.
5. In reply, the Respondent asserts that there is a consent between outgoing and incoming Advocates. Thus, provisions of order 9. Rule 9 of the Civil Procedure Code was fulfilled and complied with. On the technicalities raised, the Respondent invokes the provisions of Article 159 (2) (d) of the constitution of Kenya, 2010.
6. The Applicant in the Supplementary Affidavit states that the document relied on by the Respondent is undated and was filed after the pleadings in the Respondent's Application in issue. It thus cannot be upheld as valid on the grounds of provisions of Order 9 Rule 5 and 9

of the Civil Procedure Code. Reliance is made on the case of *Kenya Petroleum Refineries Ltd versus NGOA & 53 Others, and also Archer & Another versus (E & L.C. Misc. App)*

7. Further, it is submitted that under Order 42 Rule 6 of the Civil Procedure Rules, which prescribes that the said provisions to obtain, applicant must satisfy three conditions.

I) Demonstrate substantial loss if the order is not granted.

II) The Application must have been filed without unreasonable delay.

III) Then security must be provided for.

8. It is submitted that the Application dated 21/7/2025 seeking eviction of the Respondent culminated with the court issuing orders on 15/8/2025, which included the giving of vacant possession by the Respondent within 60 days. The Respondent never sought a stay then, highlighting the importance of timely applications to maintain procedural fairness.

9. Further, it is submitted that the Notice of Appeal was filed before the consent to change of Advocate was lodged. Thus, the same is also invalid. Thus, no jurisdiction exists to stay execution pending appeal in the Court of Appeal. After going through the parties' pleadings, affidavits and the submissions tendered verbally, I extracted the following issues:

- (i) *Whether the Notice of Appeal, Respondent Application herein lodged by Mongeri and Company Advocates is validly on record. If the above is affirmative:*
- (ii) *Is the Respondent's Application meritorious?*
- (iii) *If above (ii) is positive, what are the terms of the grant for stay?*
- (iv) *What is the order in terms of costs?*

On whether the validity of the Respondent's Notice of Appeal and the Application is validly on record.

10. The Respondent, being dissatisfied with the verdict of this court of 18/07/2025, lodged a Notice of Appeal dated 22/7/2027. Thereafter, a notice of change of Advocate dated 3/10/2025 was lodged. Thereafter, a consent between outgoing and incoming advocates was executed on an unknown date and is undated.

11. In the Replying Affidavit sworn on 27/10/2025, the Respondent deponed that the attached consent was to enable Mongeri & Company Advocates to come on record. However, it does not state the date of signing nor the date of filing.

12. In an apparent admission of the allegation by the Applicant that it was filed after the filing of the Notice of Appeal and the Respondent's Application for stay of execution, the Respondent lamented the use of procedural technicalities instead of the main issue at hand.

13. The Applicant's averments in the supplementary affidavit that the consent was filed on 27/10/2025 have not been denied or rebutted. This was 10 days after the Application dated 9/10/2025 was filed. A fact not denied. Thus, the status quo orders obtained on the strength of that Application, filed without authority and in contravention of order 9, Rules 5 and 9, of the Civil Procedure Rules 2010, are irregular, and an undated consent cannot give or validate an act. That was void ab initio as jurisdiction and capacity cannot be conferred retrospectively.

14. In the case of *Archer and 2 Others versus Archer and 2 Others (E & L.C Misc. App)*. The court determined that where the new Advocate comes on record post judgment without leave or consent, the Advocate was not properly on record, and the Application filed is deemed incompetent. See also *Kenya Petroleum Refineries Ltd versus NGOA & 53 Others (Supra)*.

15. Therefore, this court finds that the Application is incompetent and the status quo orders were irregularly issued, rendering all subsequent orders, including the vacating of the status quo, invalid. This explanation underscores the legal consequences of procedural flaws and supports the decision to annul the orders.

16. Final orders:

- 1) **The Application dated 9/10/2025 is trucked out with no orders as-to costs.**

2) The status quo orders issued on 11/11/2025 are hereby vacated under discharged.

**DATED AND DELIVERED VIA MICROSOFT TEAMS AT NAROK
THIS 28TH DAY OF NOVEMBER 2025**

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CHARLES KARIUKI

JUDGE