



Equip Agencies Limited & another v Gitau, Ngigi, Njoroge (Sued as office bearers of Gigil Total Investors Self Help Group & 4 others (Land Case 89 of 2024) [2025] KEELC 8508 (KLR) (Environment and Land) (4 December 2025) (Ruling)

Neutral citation: [2025] KEELC 8508 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA
ENVIRONMENT AND LAND
LAND CASE 89 OF 2024
MC OUNDO, J
DECEMBER 4, 2025**

BETWEEN

EQUIP AGENCIES LIMITED 1ST PLAINTIFF

GILGIL TREATMENT INDUSTRIES LIMITED 2ND PLAINTIFF

AND

**DANIEL NJUGUNA GITAU, LUCAS KIIRU NGIGI, MARY NJOROGE
(SUED AS OFFICE BEARERS OF GIGIL TOTAL INVESTORS SELF HELP
GROUP 1ST DEFENDANT**

GARAM INVESTMENTS AUCTIONEERS 2ND DEFENDANT

TOWER SAVINGS & CREDIT CO-OPERATIVE SOCIETY 3RD DEFENDANT

CHIEF LAND REGISTRAR NAKURU COUNTY 4TH DEFENDANT

I&M INVESTMENT BANK LIMITED 5TH DEFENDANT

RULING

1. Before me for determination is a Notice of Motion dated 13th August 2025 brought pursuant to the provisions of Paragraph 11(4) of the Advocates (Remuneration) Order, Order 22 Rule 22, Order 9 Rule 9, Order 42 Rule 6 of the Civil Procedure Rules, Section 1A, 1B & 3A of the [Civil Procedure Act](#) and Rule 17 of the High Court (Organization and Administration) General Rules, 2016 and all other enabling provisions of the law wherein the Applicants have sought for leave for the firm of M/s Omondi Odegi & Company Advocates to come on record for the 1st Plaintiff/Applicant in lieu of M/s Gichuki King'ara & Company Advocates and thereby deem the annexed Notice of Change of Advocates as properly filed upon payment of the requisite court fees. That thereafter there be leave



granted to the Applicant to file Reference out of time against the Ruling of the Taxing Master rendered and/or delivered on the 9th July 2025 which leave shall operate as Stay of Execution of the Certificate of Costs dated 9th July 2025 and all consequential proceedings, including the Proclamation Notice dated 8th August 2025, issued by M/s Bemac Auctioneers. That Costs of the Application, together with the Auctioneers Charges, if any, be borne by the Respondents and the Nominated Auctioneer.

2. I have looked at the Grounds in support of the application, the 2nd and 5th Respondents' Opposition to the said application as well as the submissions by both parties, the authorities cited and the applicable law. So as not to pre-empt the parties right to fair hearing, I need to point out the following:

3. The taxation of a Bill of Costs, although arising from a suit, is a post-judgment/decree proceeding. Challenging that taxation by filing a Reference is taking a step after the decision/ruling on taxation that arose from the final judgment.

4. Order 9 Rule 9 of the Civil Procedure Rules provides as follows: -

“When 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—

(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”

5. Clearly the provisions of Order 9 Rule 9 of the Civil Procedure Rules make it mandatory that for any change of Advocates after judgment has been entered to be effected, then there must be an order of the Court upon application with notice to all parties or upon a consent filed between the outgoing Advocate and the proposed incoming Advocate. The reasoning behind the provision was well articulated in the case of *S. K. Tarwadi vs Veronica Muehlmann* [2019] eKLR where the judge observed as follows:

“...In my view, the essence of the Order 9 Rule 9 of the CPR was to protect advocates from the mischievous clients who will wait until a judgment is delivered and then sack the advocate and either replace him....”

6. In the case of *Lalji Bhimji Shangani Builders & Contractors v City Council of Nairobi* [2012] eKLR the Court held as follows:

“A party who without any justification decides not to follow the procedure laid down for orderly conduct of litigation cannot be allowed to fall back on the said objective for assistance and where no explanation has been offered for failure to observe the Rules of procedure the court may well be entitled to conclude that failure to comply therewith was deliberate.”

7. The court went further to quote with approval the holding by Hon. Sitati Judge, in *Monica Moraa v Kenindia Assurance Co. Ltd.* [2010] eKLR where the court held as follows:

“.....there is no doubt in my mind that the issue of representation is critical especially in case such as this one where the Applicant's advocates intent to come on record after delivery of judgment. There are specific provisions governing such change of advocate. In my view the firm of M/S Kibichiy & Co. Advocate should have sought this court's leave to come



on record as acting for the Applicant. The firm of M/S Kibichiy & Co. has not complied with the Rules and instead just gone ahead and filed Notice of Appointment without following the laid down procedures. The issue of representation is vital component of the civil practice and the courts cannot turn a blind eye to situations where the Rules are flagrantly breached.....”

8. In the present case, the Applicant herein had been represented by Counsel wherein judgment was entered for the 1st and 2nd Defendants and the suit marked as settled in accordance with terms set out in the Deed of Settlement dated 10th June 2021. Pursuant to delivery of the judgment, the provision of Order 9 Rule 9 of the Civil Procedure Rules kicked in. The correct procedure that was to be followed in the present case, was that Counsel now coming on record for the Applicant ought to have sought leave of the court to come on record, then file and serve the Notice of Change of Advocates before filing the application seeking orders as herein above stated.
9. Instead, the Applicant’s incoming Counsel M/s Omondi Odegi & Company Advocates without leave of the Court, filed their Certificate of Urgency dated the 13th August 2025 wherein he purported to come on record, and have the Notice of Change of Advocates be deemed as properly filed, and thereafter leave be granted to the Applicant to file Reference out of time against the Ruling of the Taxing Master rendered and/or delivered on the 9th July 2025. That the leave so granted then operate as Stay of Execution of the Certificate of Costs and all consequential proceedings, including the Proclamation Notice dated 8th August 2025, issued by M/s Bemac Auctioneers.
10. This approach clearly offends the express provisions of Order 9 Rule 9 of the Civil Procedure Rules which although does not impede the right of a party to be represented by an Advocate of their choice, yet sets out the procedure to be adhered to when a party wants to change Counsel, so as to avert any undercutting and/or chaos. The firm of M/s Omondi Odegi & Company Advocates ought to have first obtained a court order or filed a signed consent from the previous counsel (who had handled the taxation), before making the current application. I find that the steps taken by the current counsel were irregular and voidable and although the Applicant has a Constitutional right to be represented, yet where there are clear provisions of the law regulating the procedure of such representation, the same should be adhered to. The procedure set out under Order 9 Rule 9 of the Civil Procedure Rules above is mandatory and thus cannot be termed as a mere technicality.
11. The above captioned procedure under Order 9 Rule 9 of the Civil Procedure Rules not having been followed by M/s Omondi Odegi & Company Advocates, I find that the said firm is not properly on record, and has no legal standing to move the court on behalf of the Applicant and therefore all pleadings filed by the said firm, including the Notice of Motion dated 13th August 2025 are hereby struck out with costs.

DATED AND DELIVERED VIA TEAMS MICROSOFT AT NAIVASHA THIS 4TH DAY OF DECEMBER 2025.

M.C. OUNDO

ENVIRONMENT & LAND COURT– JUDGE

