

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NANYUKI
CIVIL APPEAL NO. 1 OF 2020

MASS DEVELOPERS LIMITED

APPELLANT

VERSUS

MUGWERU **NGUNU**.....
RESPONDENT

R U L I N G

1. Before this Court is a Notice of Motion dated 30th July, 2025, seeking the following orders:-

1. THAT this honourable court be pleased to place on record the firm of M/S M.K. & KIMARU ADVOCATES, GIKARIA PLAZA, 2ND FLOOR, P.O. BOX, M-POST, +254718883954 - 10407, NANYUKI as the advocates on record for the Appellant in place of the firm of M/S ABWUOR AND COMPANY ADVOCATES.

2. THAT the costs of the application be in the cause.

2. The application is supported by the affidavit of KIMARU KIBUCHI, Counsel for the Appellant. It is deponed that vide a letter dated 24.04.2025 counsel was instructed by the appellant to come on record for them in Nanyuki CMC CC 52 of 2018. A letter and a resolution to that effect are annexed. He stated that upon conducting his due diligence he found that the aforesaid matter had been determined and this appeal had been filed against the decision of the trial court. He adds that upon seeking further instructions from the appellant he was directed to come on record for them in this appeal as well.

3. The application is opposed and a replying affidavit dated 26th day of September 2025 is on record. It is deponed that the matter is at the tail end after the erstwhile advocates had rendered the following:-

a) memorandum of Appeal and Record of Appeal had been done and filed.

b) Appellant's written submission had been filed.

c) Office spent its money to process appeal and settle court fees and other disbursements.

d) Legal fees for processing appeal.

4. Further the application is opposed since this matter is over and awaits only a date for judgment. It is urged that in the unlikely event that the application is allowed, the firm of Abwuor & Co. Advocates be paid Kshs. 150,000/= for services rendered so far in this matter.

5. Of determination is whether the Applicant has met the legal threshold to come on record for the Appellant in this appeal.

6. Order 9 Rule 9 of the Civil Procedure Rules provides:

***“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 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.”***

7. It is settled that once judgment has been delivered, whether in the trial court or in the appellate court, a party cannot change advocates without complying with Order 9 Rule 9.

- 8.** The purpose of the rule is to safeguard the interests of the outgoing advocate, particularly regarding costs, and to ensure orderly conduct of proceedings.
- 9.** It is worthy of note that the applicant is seeking to come on record in an on-going appeal in which judgement has not been entered. Strictly speaking therefore, the Appellant would be at liberty to instruct an advocate of choice not necessary the Advocates who prosecuted the trial at the lower court.
- 10.** The Respondent firm has opposed the application on the basis that the matter is fully progressed and further that they ought to be paid for work done.
- 11.** Granted, the Advocates are entitled to legal fees for instructions and work already done. This is however not enough to limit the right of the Appellant to be represented by an advocate of their choice.
- 12.** The erstwhile advocates have available to them legal mechanisms of accessing their proved fees. The opposition to the application on the basis that the matter has progressed and that they are owed fees is not well taken.

13. In the premises, I find merit in the application and allow it. I make the following orders;

1. The firm of M/S M.K. & KIMARU ADVOCATES be, and is hereby placed on record for the Appellant.
2. Each party to bear its own costs.

Dated signed and delivered virtually this 17th Day of February 2026.

A.K. NDUNG’U

JUDGE