



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAKURU

ENVIRONMENT AND LAND CASE 219 OF 2013

RICHARD S. NYAMBAKA.....PLAINTIFF

VERSUS

PHILIP CHAMON MISOI.....DEFENDANT

RULING

1. Through Notice of Motion dated 21st May 2017, the plaintiff seeks the following orders:

1. That this honourable court do issue an order declaring that A. M. Murindi & Company Advocates have ceased to be the advocates acting for the defendant in this matter.

2. That costs of this application be provided for.

2. The application is brought under Sections 1A, 1B, 3A and 63(e) of the Civil Procedure Act and Order 9 Rules 12 of the Civil Procedure Rules. It is supported by an affidavit sworn by the plaintiff. He deposed that he has been unable to make progress in this case since efforts to serve the defendant's advocates on record have not been successful. The reason for the failure is that the advocates are not available at the address of service which had been provided. Even documents served by registered post have not been acknowledged. Similarly, enquiries from fellow advocates practicing in Nakuru have not yielded any information as to the whereabouts of the defendant's advocates. Consequently, the plaintiff urged the court to allow the application.

3. Owing to the difficulties in physically or personally serving the defendant's advocates, the application was served upon both the defendant and his advocates by registered post. There has equally been no response either from the defendant or his advocates on record.

4. I have considered the application and the supporting affidavit. The application is brought inter alia under Order 9 rule 12 of the Civil Procedure Rules. The rule provides:

12. (1) Where an advocate who has acted for a party in a cause or matter has died or become bankrupt or cannot be found or has failed to take out a practising certificate or has been struck off the roll of advocates, or is otherwise unable to act as an advocate, and the party has not been given notice of change of advocate or notice of intention to act in person in accordance with this Order, any other party to the cause or matter may, on notice to be served on the first-named party personally or by prepaid post letter addressed to his last-known place of address, unless the Court otherwise directs, apply to the Court for an order declaring that the advocate has ceased to be the advocate acting for the first-named party in the cause or matter, and the Court may make an order accordingly.

(2) Where the order is made, the party applying for the order shall serve on every other party to the cause or matter (not being a party in default as to entry of appearance) a copy of the said order and procure the order to be entered in the appropriate court, and also leave at the appropriate court a certificate signed by the applicant or his advocate that the order has been duly served as aforesaid; and thereafter, unless and until the first-named party either appoints another advocate or else gives such an address for service as is required of a party acting in person, and complies with this Order relating to notice of appointment of an advocate or notice of intention to act in person, any document may be served on the party so in default by being filed in the appropriate court.

(3) Any order made under this rule shall not affect the rights of the advocate and the party for whom he acted as between themselves.

5. The defendant herein entered appearance in this matter on 25th March 2013 through M/s A. M. Murindi & Company Advocates whose address of service was given as A. M. Murindi & Company Advocates, Stanrise building, P.o. Box 14834 Nakuru. Subsequently on 15th April 2013, the defendant filed statement of Defence, List of Witnesses as well as List and bundle of documents in which the same address of service was reiterated. The defendant also filed Witness Statement signed by himself in which he stated that his address was P.o. Box 1836

Thika.

6. I note further that among the documents included by the defendant in his bundle of documents are copies of a Sale Agreement dated 11th October 2006, Nakuru County Council 'Transfer of Plot' form and letter dated 6th February 2013 from County Council of Nakuru. The defendant's address is indicated in all these documents as P.o. Box 280 Gilgil. I further note from the affidavits of service filed in respect of Notice of Motion dated 21st May 2017 that the application was served by registered post upon M/s A. M. Murindi & Company Advocates through P.o. Box 14834 Nakuru and upon the defendant through P.o. Box 280 Gilgil. I am therefore satisfied that the requirements of Order 9 rule 12(1) have been complied with.

7. I therefore order that:

- a) The firm of M/s A. M. Murindi & Company Advocates has ceased to be advocates acting for the defendant in this matter.
- b) The plaintiff to comply with the provisions of Order 9 rule 12(2) within 14 (fourteen) days from the date of delivery of this ruling.
- c) The notices contemplated under (b) above and all future notices and pleadings in this matter shall, unless and until the defendant either appoints another advocate or gives notice of intention to act in person inclusive of a different address for service, be served upon the defendant by prepaid registered post through P.o. Box 280 Gilgil **and** P.o. Box 1836 Thika.
- d) Costs of the application are awarded to the plaintiff.

8. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 8th day of March 2018.

D. O. OHUNGO

JUDGE

In the presence of:

Mr. Gatonye holding brief for Mr. Moseti for the plaintiff/applicant

No appearance for the defendant/respondent

Court Assistants: Gichaba & Lotkomo