



**Muasya v Kiendi (Environment and Land Appeal 10 of 2018)  
[2024] KEELC 515 (KLR) (31 January 2024) (Ruling)**

Neutral citation: [2024] KEELC 515 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI  
ENVIRONMENT AND LAND APPEAL 10 OF 2018  
TW MURIGI, J  
JANUARY 31, 2024**

**BETWEEN**

**LABAN MUASYA ..... APPELLANT**

**AND**

**CHRISTINE NGONYI KIENDI ..... RESPONDENT**

**RULING**

1. Before me for determination is the Notice of Motion dated 4<sup>th</sup> August 2023 brought under Sections 1A, 1B and 3A of the Civil Procedure Act, Order 9 Rule 9 and Order 51 of the Civil Procedure Rules 2010 and all other enabling provisions of the law in which the Applicant seeks the following orders:-
  - i. That the firm of Mutua Mathuva & Co, Advocates be granted leave to come on record for the Applicant in place of E. B. Nyamongo & Company Advocates and the Notice of Change of Advocates filed herewith be deemed duly filed and served upon granting the said leave.
  - ii. That the costs of the application be in the cause.
2. The application is premised on the grounds appearing on its face together with the supporting affidavit of Laban Muasya sworn on even date.

**Applicant's Case**

3. The Applicant averred that he wishes to appoint the firm of Mutua Mathuva & Co. Advocates to act in place of the firm of E. B. Nyamongo Advocates. He further averred that leave of court is mandatory as the judgment herein has since been delivered on 21<sup>st</sup> February 2007.

**The Respondent's Case**

4. In response to the application the firm of E. B. Nyamongo stated they were not opposed to the application as long as the incoming Advocates undertake to pay their costs.



5. The application was canvassed by way of written submissions.
6. The Applicant's submissions were filed on 19<sup>th</sup> October 2023 which I have duly considered.
7. As at the time of writing this ruling, the Respondent had not filed its submissions as directed.

### **Analysis And Determination**

8. Having considered the application, the affidavit in support and the response thereto, the only issue for determination is whether the law firm of Mutua Mathuva & Co Advocates should be allowed to come on record for the Applicant.
9. The application herein is anchored on the provisions of Order 9 Rule 9 of the [Civil Procedure Rules](#) which 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.”
10. The essence of Order 9 Rule 9 of the [Civil Procedure Rules](#) is to protect advocates from mischievous clients who will wait until a judgement has been delivered and then sack the Advocate and either replace him with another advocate or act in person.
11. In the present case, the Applicant filed the instant application seeking leave for the law firm of Mutua Mathuva & Co Advocates to come on record in place of the firm of E. B. Nyamongo. The firm of E. B. Nyamongo insisted that the incoming Advocates should undertake to pay their costs. The law provides that an Advocate can recover his unpaid fees from his former client who has changed his Advocate by filing an Advocate/Client bill of costs.
12. In my view the only option available to the Respondent is to file their bill of costs.
13. The upshot of the foregoing is that the application dated 4<sup>th</sup> August 2023 is merited and the same is allowed as prayed.

**RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 31<sup>ST</sup> DAY OF JANUARY 2024.**

**HON. T. MURIGI**

.....

**JUDGE**

I certify that this is a true copy of the original

Signed

**DEPUTY REGISTRAR**

In the Presence of:-

Court assistant Kwemboi



Mathuva for the Applicant

