



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MAKUENI

ELC NO. 146 OF 2017

(FORMERLY ELC SUIT NO. 29 OF 2016 MACHAKOS)

CAROLINE WANYUA MWENDWA.....1ST PLAINTIFF

ALPHONCE MWENDWA NYALITA.....2ND PLAINTIFF

VERSUS

CHINA ROAD AND BRIDGE CORPORATION (KENYA).....DEFENDANT

RULING

1. What is before me for ruling is the notice of motion application dated 6th July, 2018 and filed in court on the 9th July, 2018. The application is expressed to be brought under Order 9 Rule 9 and Order 51 Rule 1 of the Civil Procedure Rules, 2010 for orders:-

1. That this honorable court be pleased to grant leave to the firm of Ngeresa & Okallo Associates to come on record for the Claimant/Applicant in the place of Prof Kiama Wangai & Company Advocates.

2. That the costs of this application be awarded to the Plaintiffs/Applicants.

2. The application is predicated on the grounds on its face and is supported by the affidavit of Alphonce Nyalita Mwendwa the second Applicant herein, sworn at Nairobi on the 6th July, 2018.

3. On the 24th July, 2013 Prof. Kiama Wangai & Co. Advocates for the Plaintiffs filed grounds of opposition. The grounds are dated 23rd July, 2018. They were:-

1. That the 2nd Plaintiff has not settled the Advocates clients costs

2. That the firm of Kiama Wangai & Co. Advocates are still on record for the 1st Plaintiff.

3. That the decretal sum be deposited in court to safeguard the interest of the 1st Plaintiff and Kiama Wangai & Co. Advocates.

4. Amongst the grounds in which the application is predicated on are that due to personal reasons, the Plaintiffs have withdrawn their instructions from the firm of Prof Kiama Wangai & Co. Advocates and have appointed the firm of Ngeresa & Okallo Associates Advocates, that under Order 9 rule 9 of the Civil Procedure Rules 2010 notice of change of advocate after judgment has been entered can only be by consent of both outgoing and incoming advocates or with leave of the court, that having failed to obtain the consent from Prof. Kiama Wangai & Company advocates, leave of the court is needed so to effect the change of advocates.

5. The second Plaintiff has submitted that the outgoing advocate has declined to grant consent for the change of advocate on the grounds that he is yet to be paid his dues. It has also been submitted that the Advocates Remuneration Order of 2015 provides that a bill of costs should be filed in a misc application for taxation.

6. That the counsel should withdraw his bill of costs if he insists on representing the second Plaintiff. She has also been submitted that execution has not started in order for the decretal sum can be deposited in court.

7. Prof. Kiama's submissions were that it is only the second Plaintiff who is withdrawing and there is no authority from the first Plaintiff. That all they seek is to be compensated by the second Plaintiff.

8. Having perused the application together with the supporting affidavit, the grounds of opposition as well as the submissions filed, I do agree with incoming advocate for the second Plaintiff that execution has not commenced in order for the decretal sum to be deposited in court. Ground 3 of the grounds of opposition cannot hold in light of the fact that the only interests which can be safeguarded are those of Prof. Kiama Wangai & Co. Advocates and not those of the first Plaintiff. There is an avenue for the safeguarding of that interest namely, filing of a miscellaneous application where the bill of costs will be taxed by the Deputy Registrar of this court.

9. In my view therefore, the failure by the outgoing advocates to grant consent to the incoming advocate to represent the second Plaintiff is unreasonable. In the circumstances, I hereby proceed to allow the application in terms of prayers 1 and 2.

10. It is so ordered.

SIGNED, DATED and DELIVERED at MAKUENI this 27th day of NOVEMBER, 2018.

MBOGO C.G

JUDGE

IN THE PRESENCE OF:

Ms Ngerезe for the 2nd Plaintiff

Mr. Muchuku Court Assistant

Prof Kiama for the 1st Plaintiff Absent

Mr. Minishi for the Defendant Absent.

MBOGO C.G, JUDGE

27/11/2018