



HFC Limited v Ombwera (Enviromental and Land Originating Summons E003 of 2022) [2024] KEELC 900 (KLR) (22 February 2024) (Ruling)

Neutral citation: [2024] KEELC 900 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E003 OF 2022**

M SILA, J

FEBRUARY 22, 2024

BETWEEN

HFC LIMITED APPLICANT

AND

JOSHUA MAIGO OMBWERA RESPONDENT

RULING

(Application for leave to file a Notice of Appeal out of time; application filed by the applicant in person; applicant having had counsel on record up to the time of judgment; objection raised that the application is incompetent for failure to comply with Order 9 Rule 9 which requires an application or consent by the person seeking to act in person before replacing counsel after judgment; no compliance in this instance with Order 9 Rule 9; objection sustained; application struck out)

1. The application before me is that dated 21 August 2023 and filed by the respondent to this suit. For purposes of this application, I will refer to him as the applicant, and refer to the applicant in the Originating Summons as the respondent. The applicant seeks two substantial orders. The first is for an extension of time to lodge a Notice of Appeal out of time against the judgment of 13 July 2023, and secondly, he seeks an order of stay of execution of the judgment.
2. The respondent has opposed the application through a replying affidavit sworn by Hedaya Malesi, her Legal Manager. She has inter alia pointed out that the application is filed in person and is fatally defective. She avers that it is trite law that if the applicant has decided to act in person after previously engaging an advocate, he needed to have filed an application or filed consent between himself and his advocates on record. She has otherwise raised issues opposing the application on merit.
3. In my view, if I hold that the applicant is improperly on record, then I will have to strike out the application in limine without the need of going to its merits.



4. From the record, the applicant has been represented by the law firm of M/s Mageto & Company Advocates who filed a Notice of Appointment of Advocates on 14 March 2023. The said law firm was on record when the matter proceeded and was on record when judgment was delivered on 13 July 2023. On 15 August 2023, the applicant filed a Notice of Intention to Act in person then proceeded to file the present application in person.
5. Order 9 Rule 9 provides as follows :-
 9. Change to be effected by order of court or consent of parties [Order 9, rule 9.]

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.
6. From the above, it will be observed that where a person has previously engaged an advocate and intends to act in person after judgment, such intention to act in person ought not to be effected without an order of court, either after an application with notice to all parties or upon filing a consent between the outgoing advocate and the party intending to act in person.
7. If one intends to act in person after judgment and he had previously engaged an advocate, he simply needs to file the requisite application or consent, as the case may be. It is as simple as that. It may look like a technicality, but the issue of who is on record and whether such person is properly on record are critical, to avoid a situation where a busybody files documents in a suit when he has no authority to do so. There is also a purpose to the rule that a person who had previously engaged an advocate cannot simply walk into the suit after judgment without first notifying the outgoing advocate through an application or filing a consent with the outgoing advocate. It cannot be argued that this is a difficult provision to comply with and is a very simple rule as I have earlier stated.
8. In our case no such application was filed and no consent was filed between the applicant and his outgoing counsel to allow the applicant proceed in person after judgment. The applicant simply filed a notice of intention to act in person which notice does not even indicate that it will be served upon M/s Mageto & Company Advocates. I was in fact ready to accommodate the applicant, as I gave him some time to go and comply with the rules, but he neither filed the requisite application nor sought the consent of the law firm of M/s Mageto & Company Advocates.
9. I am afraid that given the provisions of Order 9 Rule 9, I need to hold that the application herein is incompetent, which I hereby do. It is thus not necessary for me to go to the merits of it.
10. I proceed to strike out the application with costs to the respondent.
11. Orders accordingly.

DATED AND DELIVERED THIS 22 DAY OF FEBRUARY 2024

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT KISII

Ruling Delivered in the Presence of :-



Mr. Mbatai h/b for Mrs. Maina instructed by M/s Issa & Company Advocates for the Applicant in the Originating Summons;

No Appearance on the part of M/s Mageto & Company Advocates, on record for the respondent in the Originating Summons but respondent present;

Court Assistant – Lawrence Chomba.

