



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET**

**E&L 447 OF 2012**

*Formerly HCC 103 of 2008*

**THOMAS AGURE ARAP NDOSE.....PLAINTIFF**

**VS**

**KIPSEREM ARAP KEMBOI & 3 OTHERS.....DEFENDANT**

**RULING**

***(Application to have an order that an advocate who cannot be found has ceased acting for the defendants; Order 9 Rule 12; principles to be applied in an application of this nature; law firm of defendants having been closed for some time; application allowed)***

The plaintiff has filed an application inter alia under the provisions of Order 9 Rule 12 seeking to have the law firm of M/s Amolo Sagasi & Company Advocates "to be allowed to cease acting" for the defendants and for the defendants to be deemed as acting in person. The grounds upon which the application is founded are that the said law firm of Amolo Sagasi & Company Advocates no longer exists after having closed down. It is also stated that the plaintiff is desirous of finalizing this matter but the same has dragged on due to the absence of the advocate on record for the defendant.

The application was served upon the defendants but they did not show up at the hearing of the application.

Order 9 Rule 12 provides as follows :-

*(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.*

It will be seen that the above rule makes provision for situations where the advocate on record for a party has died, become bankrupt, or cannot be found, or has failed to take out a practicing certificate, or has been struck off the roll of advocates, or is otherwise unable to act as an advocate. The supporting affidavit to this application has deponed that the law offices of M/s Amolo Sagasi, which were situated in Kapsabet are closed, and have been closed since the year 2011. I assume that the advocate on record for the defendants cannot therefore be found.

Although the application as drafted seeks an order "to allow the firm of M/s Amolo Sagasi to cease acting", the proper drafting ought to have been for an order to declare that the firm of M/s Amolo Sagasi has ceased acting. It is not a request for permission to cease acting, but rather, an order to declare the firm of advocates as having ceased to act, that is the proper purview of an application under the provisions of Order 9 Rule 12 . It is an important provision of the law, which unfortunately, is rarely utilized by litigants.

I see no reason why I ought not to allow the application. The application is therefore allowed and I make the order that the law firm of M/s Amolo Sagasi & Company Advocates have ceased acting for the defendants. Sub-rule 2 of Order 9 Rule 12 requires that the order to cease acting be served upon the affected parties. I therefore also direct the plaintiff to extract this order and ensure that it is served upon the defendants personally.

The costs of this application shall be costs in the cause.

It is so ordered.

DATED, SIGNED AND DELIVERED THIS 19TH DAY OF SEPTEMBER 2013

**JUSTICE MUNYAO SILA**

**ENVIRONMENT AND LAND COURT AT ELDORET**

***Read in open Court***

***In the Presence of:-***

***Mr. M.J. Omusundi of M/s Gicheru & Co Advocates for the Plaintiff/applicant.***