



IN THE COURT OF APPEAL

AT NAIROBI

[CORAM: SICHALE, JA (IN CHAMBERS)]

CIVIL APPLICATION NAL. NO. 256 OF 2019 (UR No. 235/2019)

BETWEEN

SYMPOSIA CONSULT LIMITED.....APPLICANT

AND

GEORGE GIKERE KABURU.....1ST RESPONDENT

COMMISSIONER FOR LANDS.....2ND RESPONDENT

RICHARD NJOROGE KYAMBUTHI.....3RD RESPONDENT

(An application for extension of time to serve a Notice of Appeal, file and serve the Memorandum of Appeal and Record of Appeal out of time against the judgment of Environment & Land Court at Thika (G.M. A. Ongondo, J) dated 14th June, 2019 **IN THIKA ELC CASE NO. 87 OF 2010**

RULING OF THE COURT

On **15th October, 2019**, the Motion dated **31st July, 2019** filed by the firm of **Mwaniki Njuguna & Co. Advocates** came up before me for hearing. Learned counsel **Mr. Mwaniki Njuguna** appeared for the applicant whilst learned counsel **Mr. Gaita** appeared for the respondent. There was however no representation from the office of the A.G. (for the 2nd respondent) in spite of service of a hearing notice upon the A.G.'s offices on **7th October, 2019**. I was informed that the 3rd respondent was deceased.

In urging the motion, **Mr. Mwaniki** contended that his firm received instructions to act for the applicant on **16th July, 2019**; that on **18th July, 2019** they filed a Notice of Appeal and served it upon the respondents' counsel on **22nd July, 2019**; that the impugned judgment was delivered on **14th June, 2019**; that the delay in receiving instructions was on account of the applicant's Managing Director's sick wife.

The motion was opposed by **Mr. Gaita** who pointed out that the applicant is improperly before me as he is a stranger in the matter. This fact was not denied by **Mr. Mwaniki Njuguna** who was of the view that mistakes committed by counsel should not be visited upon a client. It was **Mr. Gaita's** further submissions that the sickness of the Managing Director's wife was not good reason as other Directors of the applicant could have given instructions.

I have considered the record, the rival oral submissions made before me and the law. While I sympathize with the predicament of the applicant's Managing Director's wife, the non-compliance of the rules of procedure by the applicant's counsel are fatal to the application before me. As it has often been said, every game is its rules. **O.9 rule 9** of the Civil Procedure Rules (CPR) provides the position to be adhered to in the event of change of advocates. It provides:

“O.9. r.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 may be.”

It was contended, and this was not denied that the applicant was represented by another counsel, other than **Mr. Mwaniki Njuguna** at the

High Court. In order for **Mr. Mwaniki Njuguna** to come on record, he needed to comply with the provisions of **O.9 r.9** of the CPR. **Mr. Mwaniki Njuguna** has failed to comply with the provisions of **O. 9 r. 9** as aforesaid. He is therefore improperly before me and I have no option but to dismiss the motion with costs to the respondent.

It is so ordered.

Dated and delivered at Nairobi this 22nd Day of November, 2019.

F. SICHALE

JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR