



Kalicha & 5 others (Suing as the officials of Phase II Diamond Estate Association Likoni Road Nairobi) v Regnol Oil Kenya Limited & another; Nairobi City County & another (Interested Parties) (Environment & Land Case E136 of 2024) [2024] KEELC 4950 (KLR) (24 June 2024) (Ruling)

Neutral citation: [2024] KEELC 4950 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E136 OF 2024**

**JA MOGENI, J
JUNE 24, 2024**

BETWEEN

**ABDIWELI ADAN KALICHA 1ST PLAINTIFF
ABDULLAHI IBRAHIM MOHAMED 2ND PLAINTIFF
ABDIKADIR AHMED ALI 3RD PLAINTIFF
MOHAMED HUSSEIN OMAR 4TH PLAINTIFF
MOHAMMED ABDULLAHI 5TH PLAINTIFF
MAHAT DAHIR NOOR 6TH PLAINTIFF
SUING AS THE OFFICIALS OF PHASE II DIAMOND ESTATE ASSOCIATION
LIKONI ROAD NAIROBI**

AND

REGNOL OIL KENYA LIMITED DEFENDANT

AND

**ABDIAZIZ HASSAN SHEIKH T/A ABDIAZIZ & CO
ADVOCATES RESPONDENT**

AND

**NAIROBI CITY COUNTY INTERESTED PARTY
ETHICS AND ANTI-CORRUPTION COMMISSION INTERESTED PARTY**



RULING

1. The plaintiffs/applicants herein through the firm of Tim K Njenga and Company Advocates filed application dated 7/06/2024 Under the provisions of order 2 Rule 15, Order 9 Rules 5 and 6 of the Civil Procedure Rules, Section 23 (2A) of the Advocates Act Cap. 16, Regulation 58 of the Law Society of Kenya Code of Conduct and all enabling provisions of the law. seeking for orders that;
 1. This Honourable Court be pleased to strike out the Notice of Change of Advocates dated 13th May 2024 and Notice of Withdrawal of Suit dated 13th May 2024 filed by the firm of Abdiaziz & Company Advocates; and
 2. This Honourable Court be pleased to order Abdiaziz Hassan Sheikh T/A Abdiaziz & Company Advocates to bear the costs of this application.
2. The application is supported by the Supporting Affidavit sworn by Abdullahi Ibrahim Mohamed the Secretary of Phase II Diamond Association of the plaintiff/applicant on the grounds that;
 - i. That on 29th May 2024 Abdiaziz Hassan Sheikh T/A Abdiaziz & Company Advocates filed or caused to be filed a Notice of Change of Advocates dated 13th May 2024 in which he purported to have taken over the conduct of this suit on behalf of the Plaintiffs/Applicants
 - ii. That on 29th May 2023 Abdiaziz Hassan Sheikh T/A Abdiaziz & Company Advocates filed or caused to be filed a Notice of Withdrawal of suit dated 13th May 2024 purporting that Phase II Diamond Estate Association intends to wholly withdraw this suit;
 - iii. That the Plaintiffs/Applicants have never instructed Abdiaziz Hassan Sheikh T/A Abdiaziz & Company Advocates to act for them or conduct any part of the proceedings in this suit;
 - iv. That the Plaintiffs/Applicants have not instructed any other Advocate or firm of Advocate to take over the conduct of this case. The firm of Tim Njenga & Co. Advocates is on record for the Plaintiffs/Applicants to date;
 - v. That the Notice of Change of Advocates and the Notice of Withdrawal of suit filed in these proceedings by Abdiaziz Hassan Sheikh T/A Abdiaziz & Company Advocates are both scandalous and meant to embarrass the prosecution of the suit as well as frustrate the hearing and determination of the suit on merit;
 - vi. That the Notice of Change of Advocates dated 13th May 2024 was filed by Abdiaziz Hassan Sheikh T/A Abdiaziz & Company Advocates is gross violation of Regulation 58 of the Law Society of Kenya Code of Conduct;
 - vii. That the Notice of Withdrawal of Suit was filed by Abdiaziz Hassan Sheikh T/A Abdiaziz & Company Advocates without instructions from the Plaintiffs/Applicants;
 - viii. That both the Notice of Change of Advocates dated 13th May 2024 and Notice of Withdrawal of the suit dated 13th May 2024 have been drawn in gross violation of the provisions of Section 23 (2A) of the Advocates Act; and
 - ix. That it is only fair for this Honourable Court to strike out the Notice of Change of Advocates dated 13th May 2024 and Notice of Withdrawal of the suit dated 13th May 2024.



3. In the Supporting Affidavit, Abdullahi Ibrahim Mohamed avers that being the Secretary of Phase II Diamond Estate Association Likoni Road and one of the Plaintiffs in this matter that as officials of Phase II Diamond Estate Association, Likoni Road they never instructed Abdiaziz Hassan Sheikh T/A Abdiaziz & Company Advocates to take over the conduct of this case from the firm of Tim Njenga & Co. Advocates.
4. He avers that as the Secretary and the other Plaintiffs who are the officials of Phase II Diamond Estate Association, Likoni Road have never instructed Abdiaziz Hassan Sheikh T/A Abdiaziz & Company Advocates to file a notice of withdrawal of the suit or to withdraw
5. Further that before Abdiaziz Hassan Sheikh T/A Abdiaziz & Company Advocates filed the Notice of Change of Advocates dated 13th May 2024, he did not write to the firm of Tim Njenga & Co. Advocates in order to establish whether the plaintiff have withdrawn instructions from that firm.
6. The plaintiff avers that by Abdiaziz Hassan Sheikh T/A Abdiaziz filing the Notice of Change of Advocates and Notice of Withdrawal of Suit this amounts to unprofessional conduct since the advocate does not have instructions to file such documents.
7. It is the plaintiff's contention that the letter dated June 4, 2024 was served upon Abdiaziz Hassan Sheikh T/A Abdiaziz & Company Advocates expressly informing that firm that it has no instructions to conduct these proceedings on behalf of the Plaintiff yet the firm has not withdrawn the irregularly filed documents from the court record. Instead, the firm wrote back insisting that it properly filed the documents. The plaintiff annexed and marked 'AIM 4' and AIM 5 copies of correspondence dated June 4, 2024)
8. It the plaintiff's averment that the Notice of Change of Advocates dated 13th May 2024 and the Notice of Withdrawal of Suit dated 13th May 2024 are both improper documents and are irregularly filed in court and ought to be struck out.
9. The Counsel for the 1st Defendant Ms. Noor on 10/06/2024 stated that she was not going to participate in the application. On the part of Mr Abdi Aziz who the Counsel who claims to allegedly represent the plaintiff he stated that he was not going to file a response to the application and that he would rely on the letter and the order from the HCCOMM Number E242 OF 2024 in which the plaintiffs are sued as defendants and the court order which mainly addresses the issue of welfare and running of the association of Phase II Diamond East Association Likoni Road.
10. The suit before the court is about ownership, use and utilization land LR No. 209/17902 (now converted to Nairobi/Block160/698) and LR No. 209/17536/2 (now converted to Nairobi/Block 160/938) irregularly and illegally.
11. The Law Firm of Abdi Aziz has filed a Notice of Change dated 13/05/2024 and a Notice of Withdrawal of Suit on even date. No supporting documentation is attached to support the claim that they were instructed by the plaintiffs having replaced their earlier firm of advocates. Neither have they attached an Authority from the Association authorizing them to act for the plaintiffs.
12. The applicant's supporting affidavit dated 3/04/2024 annexed an authority of the plaintiffs authorizing the law firm of Tim Njenga a & Co. Advocates to act for them in the instant suit as evidenced by annexure AAK 1. Further he attached copies of the title deeds of all plaintiffs to attest to the fact that they are residents on the suit premises and members of the Association.



Analysis and Determination

13. The court is being called to determine whether Tim Njenga & Co. Advocates should be disqualified from acting for or further representing the plaintiffs in this matter.
14. Whether and under what circumstances an advocate should be barred from representing a party was discussed in detail by the Court of Appeal in *Delphis Bank Limited v Channan Singh Chatthe and 6 others* NRB CA Civil Appl. no 136 of 2005 [2005] eKLR
15. Who then should represent the plaintiffs in these in these proceedings?
16. After considering the pleadings, I have asked myself who instructed the law firm of Tim Njenga & Co. Advocates and who instructed the Law Firm Abdiaziz & Company Advocates? The law firm of Tim Njenga & Co. Advocates instituted the instant suit through a plaint dated 3/04/2024. The 2nd plaintiff has produced the authority of other plaintiffs authorizing him to represent them and the association. No similar authority has been produced by the law firm of Abdiaziz.
17. I am therefore of the view that the firm of Tim Njenga & Co. Advocates, had instructions to institute this suit. On the basis of that authority and the fact that they also produced their registration certificate it means that they are indeed the officials of the association.
18. The evidence on record gives the firm of Tim Njenga & Co., Advocates, an edge over anyone else in the context of representing the Plaintiffs as it is, prima facie, backed by what has been held out by Abdullahi Ibrahim Mohamed, in his capacity as the secretary of the association.
19. The next issue is whether the firm of Tim Njenga & Co., Advocates, had instructions to institute this suit. As a general rule, it is imperative that there should a resolution authorizing a particular firm of Advocates to institute any suit in the name of a representative group or company. That practice was captured in the authority that was issued to the firm of Tim Njenga & Co., Advocates.
20. Being an association it is not a body corporate and so it lacks the capacity to be sued in its own name. A reading of Section 3 of the *Societies Act* connotes that such a body cannot sue or be sued in its own name. Vindication of its rights can only be taken by the official holders therein. Thus the pronouncements of Nambuye J (as she then was), in *Living Water Church International vs City Council of Nairobi* [2008] eKLR are instructive. In the same vein, Order 1, Rule 8 of the *Civil Procedure Rules* allows parties to file suit on its behalf by way of a representative suit.
21. As such it is instructive that the officials of the association are the ones who instructed Tim Njenga & Co Advocates to file a suit.

Disposal Orders

22. In summary, I find that the authorization produced by the 2nd plaintiff, is the only prima facie evidence on record to show who the association's Advocates are. The application before the Court therefore succeeds to the extent that there is an authorization by the officials of the association who have instituted the suit in their own names on behalf of the association and their advocate is Tim Njenga & Co. Advocates, while there is no similar evidence for the appointment of Abdiaziz & Company Advocates. Each party will bear its own costs of this application.
23. Since there is no other application I direct parties to go for Pre Trial Conference on 9/07/2024 before the Deputy Registrar to prepare the suit for hearing

It is so ordered.



DATED, SIGNED AND DELIVERED AT NAIROBI THIS 24TH DAY OF June 2024.

.....

MOGENI J

JUDGE

In the presence of:

Mr. Njenga for Plaintiff

Mrs. Anjiko holding brief for Mr. abdiaziz for Plaintiff

Ms. Angiela holding brief for Mr. Oketch for 1st Interested Party

No appearance for 2nd Interested Party

Caroline Sagina - Court Assistant

.....

MOGENI J

JUDGE

