



REPUBLIC OF KENYA



Thirimbi alias Karinguri v Thimangu & another (Environment and Land Appeal E002 of 2022) [2024] KEELC 5786 (KLR) (24 July 2024) (Ruling)

Neutral citation: [2024] KEELC 5786 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND APPEAL E002 OF 2022**

CK NZILI, J

JULY 24, 2024

BETWEEN

JULIUS MUTI THIRIMBI ALIAS KARINGURI APPELLANT

AND

STANLEY THIMANGU 1ST RESPONDENT

JACOB MUGAMBI 2ND RESPONDENT

RULING

1. Through an application dated 19.6.2024, the applicant asks the court to order the refund of Kshs.100,000/=, which had been deposited as security. The grounds are that the appeal was determined in his favor on 30.3.2024 and he needs the said money for the appeal filed by the respondents at the Court of Appeal as Nyeri E089 of 2024.
2. In his supporting affidavit sworn on the even date, the applicant annexed a copy of the respondents' memorandum of appeal as "JMT 1" and alleged that he needs the security money to engage an advocate.
3. The 1st respondent opposes the application through a replying affidavit sworn on 26.6.2024. He avers that the application is premature in light of the pending appeal at Nyeri; the current advocate has not sought leave to come on record; the pending appeal has high chances of success and the reliefs are not tenable.
4. Order 9, Rule 9 of the *Civil Procedure Rules* provides for change of advocates to be affected through a court order or consent of parties. The essence is majorly to protect mischievous clients who, upon the delivery of a judgment, attempt to unceremoniously sack an advocate, as held in *S. K. Tarwadi vs Veronica Muehlemann* [2019] eKLR. The same position was held in *Serah Wanjiru Kung'u vs Peter Munyua Kimani* [2021] eKLR, where the court struck out an application by advocates who were not properly on record.



5. The application before the court was filed by Kaberia Arimba & Company Advocates, while the applicant was initially represented by Kevin Nyenyire & Company Advocates. There is no consent or a court order in line with Order 9 Rule 9 of the *Civil Procedure Rules* to authorize the new law firm to come on record for the applicant.
6. Failure by a party to adhere to the provisions on legal representation under Order 9 *Civil Procedure Rules* cannot be cured by Article 159 of the *Constitution*. The current law firm on record did not follow the correct procedure, as the same is mandatory and not a mere technicality. Therefore, the said law firm lacks locus standi, without which the court is divested of jurisdiction to determine the present application.
7. As such, the firm of Kaberia Arimba & Company Advocates has failed to follow the procedure. The said firm is not properly on record and has no legal standing to move the court on behalf of the applicant. As a result, all pleadings filed by it ought to be struck out.
8. Consequently, and in the absence of such leave of court or consent of parties as provided by the law, the application is as a result struck out. Since the appeal was determined, the pendency of an appeal cannot be used to stop the court from acting in the interest of justice. There is no appeal or order against the release of the security. It shall forthwith be released to the depositor.

**DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU
ON THIS 24TH DAY OF JULY, 2024**

In presence of

C.A Kananu/Mukami

Gumato for respondent

Miss Gitonga for applicants

HON. C K NZILI

JUDGE

