



REPUBLIC OF KENYA



KENYA LAW
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Maina v Yantai Welworth International Trade Co. Ltd & 2 others (Cause E816 of 2021) [2022] KEELRC 3980 (KLR) (10 June 2022) (Ruling)

Neutral citation: [2022] KEELRC 3980 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E816 OF 2021**

J RIKA, J

JUNE 10, 2022

BETWEEN

STEPHEN MWANGI MAINA CLAIMANT

AND

**YANTAI WELWORTH INTERNATIONAL TRADE CO. LTD 1ST
RESPONDENT**

CAREPLUS LTD 2ND RESPONDENT

LIU ZHIGANG 3RD RESPONDENT

RULING

1. The Advocates for the Respondents filed an Application dated January 27, 2022, seeking leave, to amend their Notice of Appointment of Advocates dated October 12, 2021.
2. They wish to exclude the 1st Respondent from their legal representation. They state that they did not receive instructions from the 1st Respondent, which is a firm resident in China. They have not been retained by the 1st Respondent, in terms of the *Advocates Act*. The Advocates state that they only received instructions from the 2nd and 3rd Respondents.
3. The Application is vehemently opposed by the Claimant. He submits that the Respondents' Advocates filed a Notice of Appointment of Advocates, clearly stating they were instructed by all the Respondents. The Claimant filed an Application under certificate of urgency, dated 1st October 2021 seeking deposit of security by the Respondents. The Respondents were directed to file their Response, and the Application was scheduled for hearing on October 13, 2021. The 3rd Respondent fled the Country soon after service, with the intention of defeating the Claimant's Application.
4. The Claimant submits that the Application is meant to impede justice. The Respondents' Advocates are estopped from altering their previous position.



The Court Finds: -

5. Representation of a Client by an Advocate cannot be compelled. A Client has the right to choose his Advocate, and the Advocate similarly has the right to select whether to represent, or not represent a Client.
6. The position taken by the Claimant, in responding to the Application, does not appear to acknowledge this right and freedom of legal representation.
7. The Application relates to the 1st Respondent, not the 3rd Respondent, who the Claimant alleges to have fled the jurisdiction of the Court.
8. If a Notice of Appointment was filed by the Respondents' Advocates on October 12, 2021, it does not bind the Advocates to represent the Respondents to the end of the proceedings, or bind the Respondents to retain the Advocates, to the end of the proceedings. The Respondents' Advocates can opt out of the retainer; they are free to represent some or none of the Respondents; and the Respondents have reciprocal rights on legal representation. The Advocate-Client relationship is not static.
9. The business and legal relationships, amongst the Respondents, which the Claimant has devoted a portion of his Submissions to, is immaterial to the question of representation. The Claimant has sued 3 separate legal and natural persons. They cannot be compelled to have one Advocate. The Advocates on record for them, cannot be compelled to continue representing them. The Advocates for the Respondents state that, they do not have instructions from the 1st Respondent, and have not received any fees from the 1st Respondent. They are entitled to rectify the Notice of Appointment of Advocates, which includes all the Respondents as their Clients. The Claim is not impeded by change or withdrawal of Advocates.
10. The Notice in question in fact, appears to the Court defective. It is signed by Ondieki Orangi & Company Advocates, for the Proposed Interested Party. The Claim herein does not have a Proposed Interested Party.
11. There is sufficient reason to allow the Advocates for the Respondents to amend Notice of Appointment of Advocates. It may be necessary for the Parties to amend their Pleadings to reflect the change in representation.

It Is Ordered: -

- a. The Respondents' Advocates are granted 15 days from the date of this Ruling, to file an Amended Notice of Appointment of Advocates and Amended Pleadings if need be.
- b. The Respondents' Advocates to serve the Amendments upon the 1st Respondent in person, electronically or physically.
- c. The Claimant has corresponding leave of 15 days to file and serve Amended Pleadings if necessary.
- d. The Claimant shall serve such Pleadings upon the 1st Respondent in person, electronically or physically.
- e. Parties shall move the Court for further orders.
- f. Costs in the cause.



**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI,
UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 10TH
DAY OF JUNE 2022.**

JAMES RIKA

JUDGE

