



King'ara (Suing as the Personal Representative and Beneficiary of the Estate of the Late King'ara Kanyingi) v Gutu & another (Environment & Land Case 2003 of 2007) [2024] KEELC 13362 (KLR) (22 November 2024) (Ruling)

Neutral citation: [2024] KEELC 13362 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 2003 OF 2007
LN MBUGUA, J
NOVEMBER 22, 2024**

BETWEEN

MICHAEL NJAU KING'ARA (SUING AS THE PERSONAL REPRESENTATIVE AND BENEFICIARY OF THE ESTATE OF THE LATE KING'ARA KANYINGI) PLAINTIFF

AND

**JORAM KAMAU GUTU 1ST DEFENDANT
KIAMBU COUNTY COUNCIL (COUNTY GOVERNMENT OF KIAMBU) 2ND DEFENDANT**

RULING

1. Before me is the 1st defendant's Notice of Motion Application dated 1.8.2024 seeking orders directing the plaintiff, his estate and agents to desist from harassing the applicant, a stay of execution as well as a review of the judgment delivered on 5.10.2023 and in the alternative, the court to enlarge time to file an appeal.
2. The application is premised on the grounds on the face of the application and the supporting affidavit of the one Lucy Ngonyo Lattrell, an administrator of the estate of Joram Kamau Gutu. She contends that the administrators of the estate of Joram lost touch with their advocates who failed to inform them about the judgment. She contends that the suit parcel Kiambaa/Thimbigua/2057 no longer exists as the Estate of Joram had subdivided the land and sold it to third parties. Thus the judgment delivered herein is not enforceable. She further avers that the claim of adverse possession was not adequately proved by the plaintiff.
3. On 12.8.2024, the court gave directions that the application be served for interpartes hearing on 4.8.2024.



4. When the application came up for hearing on 4.11.2024, counsel for the plaintiff raised a preliminary issue contending that the current advocates for the applicant did not seek leave to come on record as stipulated under Order 9 rule 9 of the Civil Procedure Rules, adding that service was only effected on that Saturday.
5. In rejoinder, the applicants counsel stated that they duly filed a Notice of Change of Advocates. He also stated that the late service was because they had difficulties tracing the contacts of the plaintiff's advocates.
6. This ruling therefore relates to the preliminary issue as to whether the applicants advocates are properly on record before this court. The law governing representation of a party after judgment is to be found under Order 9 Rule 9 of the Civil Procedure Rules, where it is provided that;

“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.”

7. In the case of Chepkwony & Another vs Jonathan Sitonik Chebusit & Another [2021] eKLR, the court stated thus:

“Clearly the provisions of Order 9 Rule 9 of the Civil Procedure Rules make it mandatory that for any change of Advocates after judgment has been entered to be effected, then there must be an order of the Court upon application with notice to all parties or upon a consent filed between the outgoing Advocate and the proposed incoming Advocate”.

Also see Bryan Moturi & Associates v Simmons & Another (Miscellaneous Application 369 of 2015) [2022] KEHC 559 (KLR) (13 May 2022) (Ruling) Neutral citation: [2022] KEHC 559 (KLR) amongst a host of other similar decisions.

8. Judgment in this matter was delivered on 5.10.2023, hence the above mentioned provisions of law apply. The advocates for the applicants did not seek leave of the court to come on record, nor do they have the requisite consent. As such, their Notice of change of advocates is not applicable in these proceedings. Thus the application dated 1.8.2024 is irregularly filed by an advocate who is not properly on record and is hereby struck out with costs to the plaintiff.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 22ND DAY OF NOVEMBER, 2024 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Njagi for the Plaintiff

Kinyanjui for 1st Defendant

Court Assistant: Vena

