



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT NAKURU**  
**CAUSE NO. 78 OF 2013**

**EVANS TELA**

**CLAIMANT**

**v**

**JOHN MATHENGE**

**RESPONDENT**

**RULING**

1. Judgment in this Cause was delivered on 5 July 2013 and the Claimant moved to execute the same year.
2. At the time, the Claimant was represented by the firm of Oumo & Co. Advocates.
3. On 30 March 2015, the firm of Wambeyi Makomere & Co. Advocates moved Court to come on record for the Claimant.
4. It is not clear from the record whether that application was prosecuted or leave was granted. There is also no consent from the firm of Oumo & Co. Advocates in the file.
5. On 27 September 2017, the firm of Wambeyi Makomere & Co. Advocates filed a *Notice of Change of Advocates* to replace the firm of Oumo & Co. Advocates.
6. On the same day, the firm filed an application under certificate of urgency seeking
  1. ...
  2. **THAT** this honourable court be pleased to review its judgment and state that one **JOHN MATHENGE** respondent herein is also referred to as **JONES MATHENGE.**
  3. **THAT** upon prayer 2 above being granted this honourable court be pleased to order that **JOHN MATHENGE** refers to one and the same person who is the respondent herein and execution of the decree do issue.
7. The Court directed that the application be served for *inter partes* hearing on 24 October 2017.
8. On 24 October 2017, the Court granted the Respondent up to 3 November 2017 to file a response to the motion, and hearing was rescheduled to 30 November 2017.
9. The response was not filed nor did the Respondent attend Court on 30 November 2017, and the Court

allowed Mr. Wambeyi to prosecute the application.

10. The Court has given due consideration to the application, the grounds relied on and the supporting affidavit of the Applicant.

11. In the view of the Court, the application has no merit and is also incompetent.

12. For one, the firm of Wambeyi Makomere & Co. Advocates appear not to be formally on record. The firm must have been aware of that situation hence the attempt to formalise the same by filing a *Notice of Change of Advocates* after having filed and failed to prosecute the application for leave to come on record after judgment.

13. Two, the execution process had commenced and the procedural law has provided avenues for parties to follow in the event that the execution process has met legal impediments. An application such as is presented herein is not one of such avenues where a decree remains unsatisfied.

14. Three, it is doubtful whether the Court can change or amend the identity of parties after delivery of judgment through an application as presented.

15. Four, there has been no explanation for the 3 or so years it has taken the Claimant to move Court.

16. The motion dated 13 July 2017 is therefore dismissed with no order as to costs.

**Delivered, dated and signed in Nakuru on this 6<sup>th</sup> day of December 2017.**

**Radido Stephen**

**Judge**

**Appearances**

For Applicant            Mr. Wambeyi instructed by Wambeyi Makomere & Co. Advocates

For Respondent        Rubua Ngure, Wangari & Co. Advocates

Court Assistant        Nixon