



REPUBLIC OF KENYA



**Githiga & 5 others v Kiru Tea Factory Company Ltd (Petition  
13 of 2019) [2019] KESC 81 (KLR) (29 November 2019) (Ruling)**

*Stephen Maina Githiga & 5 others v Kiru Tea Factory Company Ltd [2019] eKLR*

Neutral citation: [2019] KESC 81 (KLR)

**REPUBLIC OF KENYA**

**IN THE SUPREME COURT OF KENYA**

**PETITION 13 OF 2019**

**DK MARAGA, CJ & P, MK IBRAHIM, JB OJWANG, SC WANJALA & N NDUNGU, SCJJ**

**NOVEMBER 29, 2019**

**BETWEEN**

**STEPHEN MAINA GITHIGA ..... 1<sup>ST</sup> APPELLANT**  
**ESTON GAKUNGU GIKOREH ..... 2<sup>ND</sup> APPELLANT**  
**PETER KINYUA ..... 3<sup>RD</sup> APPELLANT**  
**FRANCIS MACHARIA MARK ..... 4<sup>TH</sup> APPELLANT**  
**LERIONKA TIAMPATI ..... 5<sup>TH</sup> APPELLANT**  
**JOHN F KENNEDY OMANGA ..... 6<sup>TH</sup> APPELLANT**

**AND**

**KIRU TEA FACTORY COMPANY LTD ..... RESPONDENT**

*(Being an application to strike out Notice of Appeal,  
Petition, and Notice of Appointment of Advocates)*

**Supreme Court allows application for the striking out of a notice of appointment, notice of change of advocates and certain pleadings**

*A question about whether a certain firm (M/s. Ochieng, Onyango, Kibet & Ohaga Advocates) that had filed pleadings before the Supreme Court was properly on record had arisen. The Supreme Court ruled that a different firm (Kithinji Marete & Company Advocates) was properly on record and it struck out the notice of appointment, notice of change of advocates and all pleadings filed by the firm of M/s. Ochieng, Onyango, Kibet & Ohaga Advocates.*

Reported by Beryl Ikamari



**Civil Practice and Procedure** – legal representation - appointment of advocates and change of advocates - pleadings filed by advocates who were not properly on record - whether pleadings filed by advocates who were not properly on record would be struck out.

### **Brief facts**

There were two applications before the court. The first application was filed by the firm of Kithinji Marete & Company advocates and it sought orders for the striking out of a notice of appointment of advocates, a notice of change of advocates and all pleadings filed by the firm of Ochieng, Onyango, Kibet & Ohaga Advocates (Triple OK Law.) The second application was filed by the respondents and it sought the striking out of the notice of appeal and the petition filed by the firm of M/s. Millimo Muthomi & Company Advocates.

The grounds for the second application were that the appeal related to a matter in which the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> appellants could not be parties. The 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> appellants had withdrawn their review application against the orders of the Court of Appeal of December 6, 2017 which held them to be in contempt of court. The decision of March 28, 2019 which was the subject of the Supreme Court appeal was a decision relating to an application for the review of the earlier decision on contempt of court.

### **Issues**

- i. Whether a firm of advocates was properly on record.
- ii. Whether parties who had withdrawn their review applications but a review decision had been made on the basis of other applications could be parties to a Supreme Court challenge relating to the review decision.

### **Held**

1. The firm of M/s. Ochieng, Onyango, Kibet & Ohaga Advocates filed affidavits to show that they were duly appointed by the respondent. The affidavits and submissions that they proffered were also presented in *Stephen Maina Githiga and 5 others v Kiru Tea Factory Company Limited*, Application No 12 of 2019, Supreme Court of Kenya at Nairobi, and the court ruled that the firm of Kithinji Marete & Company Advocates was properly on record.
2. Since the firm of Kithinji Marete & Company Advocates was properly on record, the impugned notice of appointment, notice of change of advocates and all pleadings filed by the firm of Triple OK Law were struck out.
3. The appellants had not responded to the second application. They were granted 21 days from the date of the ruling to file the reply.

*The first application was allowed.*

### **Orders**

- i. *The notice of appointment of advocates dated April 4, 2019, and filed on an even date by M/s. Ochieng, Onyango, Kibet & Ohaga Advocates, was struck out.*
- ii. *The notice of change of advocates dated April 15, 2019, and filed on April 17, 2019 by M/s. Ochieng, Onyango, Kibet & Ohaga Advocates was struck out.*
- iii. *All pleadings filed by M/s. Ochieng, Onyango, Kibet & Ohaga Advocates on behalf of Kiru Tea Factory Company Limited, in relation to the matter, were struck out.*
- iv. *The appellants had to, within 21 days of the date of the ruling, file a response to the second notice of motion, dated May 3, 2019.*
- v. *The determination of the application to strike out the notice of appeal dated March 29, 2019, and filed April 1, 2019, and Supreme Court Petition No. 13 of 2019 (i.e., the second application), would await further directions of the court.*
- vi. *Costs to be in the cause.*

### **Citations**

### **Statutes**



1. Constitution of Kenya, 2010

**Advocates**

None mentioned

**RULING**

1. Coming up before this Court are two Notice of Motion applications filed by the firm of Kithinji Marete & Company advocates, dated 3 May 2019 and filed on 6 May 2019. The first application is seeking the following Orders:
  - (i) that the notice of appointment of Advocates dated 4 April 2019, and filed on even date by M/s. Ochieng, Onyango, Kibet & Ohaga Advocates [M/s. Triple OK Law] be struck out with costs;
  - (ii) that the notice of change of Advocates dated 15 April 2019, and filed on 17 April 2019 by M/s. Ochieng, Onyango, Kibet & Ohaga Advocates, be struck out with costs;
  - (iii) that all pleadings filed by M/s. Ochieng, Onyango, Kibet & Ohaga Advocates, on behalf of Kiru Tea Factory Company Limited in relation to this matter, be struck out with costs;
  - (iv) that the costs of, and incidental to this application be provided for.
2. In the second application, the respondent is praying for the following orders:
  - (i) that the notice of appeal dated 29 March 2019, and filed on 1 April 2019, be struck out with costs;
  - (ii) that Supreme Court Petition No. 13 of 2019 — Stephen Maina Githiga & Others v. Kiru Tea Factory Company Limited — as instituted by the Petition of 3 April 2019 be struck out with costs; and
  - (iii) that the costs of, and incidental to this application be provided for.
3. Petition No. 13 of 2019 (Stephen Maina Githiga & Others v. Kiru Tea Factory Company Limited) is an appeal against the decision of the Court of Appeal delivered on 28 March 2019, an application for review of that Court’s Ruling of 22 February 2019, which had found the appellants in contempt of its Orders. The appellants argue, inter alia, that the Appellate Court committed grave injustice, and a breach of vital principles falling under Articles 27(1), 50(1) and 159(2)(a) & (e) of the Constitution. These applications were filed just after the filing of the petition. The background to these two applications has been clearly set out in our Ruling in Supreme Court Application No. 12 of 2019 (Stephen Maina Githiga & Others v. Kiru Tea Factory Company Limited), and there is no need to restate the pertinent facts here.
4. The 1<sup>st</sup> – 4<sup>th</sup> appellants have filed affidavits, all dated 13 May 2019, asserting that the firm of M/s Triple OK Law was appointed by Kiru Tea Factory Company, the respondent herein, to represent it. The same affidavits and submissions proffered in the present applications were also presented in Application No. 12 of 2019 (Stephen Maina Githiga and 5 Others v. Kiru Tea Factory Company Limited), in respect of which we have ruled that the firm of Kithinji Marete & Company Advocates is properly on record. Our decision was informed by an existing Order of the Court of Appeal, dated 6 December 2017.
5. Having ruled that the firm of Kithinji Marete & Company Advocates is properly on record for Kiru Tea Factory Company Limited, we do not hesitate to strike out the Notice of Appointment lodged by



Triple OK Law, as well as its Notice of Change of Advocates, and all pleadings which that firm has filed on behalf of the Company — as sought in the first application.

6. We now turn to the second application by the respondents, which is supported by the affidavit of Mr. Geoffrey Chege Kirundi, dated 3 May 2019. He is urging the Court to strike out the Notice of Appeal, as well as the petition by the appellants, which is filed by the firm of M/s. Millimo Muthomi & Company Advocates. He avers, inter alia, that the appeal seeks to overturn the Court of Appeal decision of 28 March 2019; and that the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> appellants had withdrawn their application for review of the Appellate Court decision which held them to be in contempt of Orders issued on 6<sup>th</sup> December 2017. It is Mr. Kirundi's averment that the said appellants were no longer parties to the cause, and so they cannot rightly pursue the appeal matter, and their Notice of Appeal will only pervert the cause of justice, and amount to abuse of the process of the Court.
7. The appellants have not responded to the second application. Following our earlier Ruling on representation, we allow scope for a reply within 21 days of the date hereof: in which event the question shall be placed before the Court for expeditious hearing and disposal.
8. Accordingly, we now make the following Orders:
  - (a) The Notice of Appointment of Advocates dated 4 April 2019, and filed on even date by M/s. Ochieng', Onyango, Kibet & Ohaga Advocates, is hereby struck out.
  - (b) The notice of change of advocates dated 15 April 2019, and filed on 17 April 2019 by M/s. Ochieng', Onyango, Kibet & Ohaga Advocates is hereby struck out.
  - (c) All pleadings filed by M/s. Ochieng', Onyango, Kibet & Ohaga Advocates on behalf of Kiru Tea Factory Company Limited, in relation to this matter, are hereby struck out.
  - (d) The appellants shall, within 21 days of the date of this Ruling, file a response to the second Notice of Motion, dated 3 May 2019.
  - (e) The determination of the application to strike out the Notice of Appeal dated 29 March 2019, and filed 1 April 2019, and Supreme Court Petition No. 13 of 2019 (i.e., the second application), shall await further directions of this Court.
  - (f) Costs shall be in the cause.

**DATED AND DELIVERED AT NAIROBI THIS 29<sup>TH</sup> DAY OF NOVEMBER 2019.**

.....

**D.K. MARAGA**

**CHIEF JUSTICE AND THE PRESIDENT OF THE SUPREME COURT**

.....

**M. K. IBRAHIM**

**JUSTICE OF THE SUPREME COURT**

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**J. B. OJWANG**

**JUSTICE OF THE SUPREME COURT**

.....



**S.C. WANJALA**  
**JUSTICE OF THE SUPREME COURT**

.....

**NJOKI NDUNGU**  
**JUSTICE OF THE SUPREME COURT**

I certify that this is a true copy of the original

**REGISTRAR,**  
**SUPREME COURT OF KENYA**

