



REPUBLIC OF KENYA



**KENYA LAW**  
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**Gachomba v Mindi (Civil Appeal E007 of 2023)  
[2025] KEHC 8977 (KLR) (Civ) (25 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8977 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYANDARUA**

**CIVIL**

**CIVIL APPEAL E007 OF 2023**

**KW KIARIE, J**

**JUNE 25, 2025**

**BETWEEN**

**PAUL MWANGI GACHOMBA ..... APPELLANT**

**AND**

**DAVID GITHENYA MINDI & 13 OTHERS ..... RESPONDENT**

*(Being an Appeal from the Engineer Senior Principal Magistrate's ruling in SPMCC Nos. 35, 40, 41, 43, 44, 45, 46, 47, 49, 50, 51, 115, & 116 of 2018 by Hon. H.O. Barasa—Senior Principal Magistrate)*

**JUDGMENT**

1. The appellant was the defendant in Engineer Senior Principal Magistrate's SPMCC Nos. 35, 40, 41, 43, 44, 45, 46, 47, 49, 50, 51, 115, & 116 of 2018. The respondents had filed claims from a road traffic accident involving motor vehicle registration number KCB 228X and motor vehicle registration number KBQ 632E. The respondent was the driver of the motor vehicle registration number KCB 228X owned by Satima Cooperative Society Ltd. As a result of the accident, the respondents sustained injuries.
2. On the 25<sup>th</sup> day of July 2023, the appellant applied to set aside the judgments entered in the above matters. He also sought that the 14 cases be consolidated after the decisions were set aside. The application was dismissed on the 3<sup>rd</sup> day of October 2023.
3. The appellants were aggrieved by the judgment and filed this appeal. The firm of Ndegwa Wahome & Company Advocates represented him. He raised the following grounds of appeal:
  - a. The learned trial magistrate occasioned the appellant a grave miscarriage of justice by failing to appreciate that the appellant's purported lawyer was appointed for him by a troubled insurance



company, namely M/S Invesco Assurance Company Limited, and that the said lawyer never involved him in any way whatsoever in the proceedings before the court.

- b. The learned trial magistrate erred in law and fact in his determination that the appellant had representation in court and when the purported representative acted without any instructions from or by the appellant made grave and adverse commitments on behalf of the appellant without the appellant's knowledge, consent and or concurrence occasioning a grave miscarriage of justice.
  - c. The trial magistrate committed a grave error of law by determining that the appellant was ably represented by an advocate when such basics as compliance with Order 11 Rule 5 of the Civil Procedure Rules had not been complied with. The appellant never submitted his statement, documents, or witness statements, which compromised the appellant's case and denied him the benefit of the rules of natural justice of being heard before being judged.
  - d. The learned trial magistrate erred in law and fact by determining that the very adverse and grave actions of the purported advocate for the appellant were made on the appellant's behalf and by inference with his consent and concurrence.
  - e. The learned trial magistrate erred in both law and fact by failing to appreciate that the appellant had a good and unimpeachable defence to all the claims herein and which raised weighty and triable issues and in particular the question of the number of claims against the appellant at 19 when his vehicle had a capacity of 13 passengers only.
  - f. The learned trial magistrate erred in both law and fact by disregarding celebrated case law and failing to order the consolidation of the 14 suits herein for just and expedient disposal of the same.
  - g. The learned trial magistrate misapprehended Order 9 Rule 9 of the Civil Procedure Rules and the Notice of Appointments of Advocates by M/s Ndegwa Wahome & Co Advocates dated 13/06/2023, and therefore occasioned the appellant grave injustice by erroneously determining that the said advocates were not properly on record.
  - h. The said ruling and orders by the learned trial magistrate was unjust, unconscionable, and in total disregard of the appellant's Notice of Motion Application dated 25/07/2023 and all the dispositions thereof.
  - i. The learned magistrate's ruling and order have no foundation in law nor the material evidence presented before him.
  - j. The learned trial magistrate failed to appreciate or consider the gravity of the judgments/ decrees against the appellant and their impact on his life despite the same having been reached without his knowledge, participation, concurrence, or consent.
  - k. That it is in the larger interest of justice that this appeal be allowed and that the appellant be afforded his day in court for justice to be done and seen to be done.
4. The respondent opposed the appeal through the firm of Mwaura Kamau & Company Advocates, raising the following grounds of opposition:
- a. The firm of Ndegwa Wahome & Company Advocates was not properly on record.
  - b. The appellant admitted that he was served with a summons to enter an appearance.



- c. The firm of Ngaywa, Ngigi and Kibet Advocates appeared for the appellant and participated in the proceedings.
5. This Court is the first appellate court. I am aware of my duty to evaluate the entire evidence on record, bearing in mind that I had no advantage of seeing the witnesses testify and watching their demeanour. I will be guided by the pronouncements in the case of *Selle vs Associated Motor Boat Co. Ltd.* [1965] E.A. 123, where it was held that the first appellate court has to reconsider and evaluate the evidence that was tendered before the trial court, assess it and make its own conclusions in the matter.
6. I have perused the original trial court's files and noted that the firm of Ngaywa, Ngigi and Kibet Advocates appeared for the appellant. The appellant cannot turn around and raise a claim that he did not instruct the firm to represent him. If the firm imposed itself on his case, the proper redress would have been to file a claim against them.
7. The respondents have contended that the firm of Ndegwa Wahome & Company Advocates was not properly on record when they filed the application dated the 25<sup>th</sup> day of July 2023, since judgments had been delivered. Order 9 Rule 9 of the Civil Procedure Rules provides as follows:
- 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.
8. The Notice of Appointment of Advocate was filed by the firm of Ndegwa Wahome & Company Advocates on the 13<sup>th</sup> day of June 2023. The notice indicated that the appellant (1<sup>st</sup> defendant Judgment debtor) had appointed the firm to act alongside M/s Ngaywa Ngigi & Kibet Advocates. This flies into the face of argument by the appellant that M/s Ngaywa Ngigi & Kibet Advocates were not representing him. Secondly, since judgment had been delivered, there was a need to comply with the requirements of Order 9 Rule 9 of the Civil Procedure Rules. In the case *John Langat vs Kipkemoi Terer & 2 Others* (2013) eKLR, A. O. Muchelule J. (as he then was) faced with similar circumstances stated:
- There was no application made to change advocates. In the Replying Affidavit, the Appellant swore that there was a consent entered into between his previous advocates and his present advocate to effect change. This was done following the judgment. He annexed the said consent. There is no evidence that the respondents were put in the picture. But more important, the consent could not effect the change of advocates “without an order of the court.” No such order was sought or obtained.
9. Since Order 9 Rule 9 of the Civil Procedure Rules is framed in mandatory terms and must be adhered to by incoming counsel after judgment, the appellant's counsel was not properly on record. The learned trial magistrate made a correct finding in the impugned ruling.
10. The upshot of the above finding, this appeal is likewise incompetent. It is therefore struck out with costs.

**DELIVERED AND SIGNED AT NYANDARUA THIS 25<sup>TH</sup> DAY OF JUNE 2025**

**KIARIE WAWERU KIARIE**



**JUDGE**

