



REPUBLIC OF KENYA



**Dadhley & another v Sapra & another (Civil Appeal E492 of 2022)
[2025] KEHC 10892 (KLR) (Civ) (24 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 10892 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E492 OF 2022

JM OMIDO, J

JUNE 24, 2025

BETWEEN

RAJ DADHLEY 1ST APPELLANT

HARPREET K. BHOGAL 2ND APPELLANT

AND

ASHMAN MADAN SAPRA 1ST RESPONDENT

KULDIP MADAN SAPRA 2ND RESPONDENT

(Being an Appeal from the Ruling and Order of Hon. E.M. Kagoni, Principal Magistrate delivered on 21st June, 2022 in Milimani CMCC No. E744 of 2021)

JUDGMENT

1. This appeal emanates from the ruling and order of Hon. E.M. Kagoni, Principal Magistrate, delivered on 21st June, 2022 in Milimani CMCC No. E744 of 2021. The order that arose from the ruling was that judgement on admission was entered against the Appellants for the sum of Ksh.2,991,182.05/-.
2. It is instructive from the record that the law firm of T.K. Rutto & Company Advocates was at the time of entry of judgement on record for the Appellants (the Defendants before the lower court). It is the said law firm that filed the Memorandum of Appeal in the present appeal, for and on behalf of the Appellants.
3. A further perusal of the record bears it that the firm of Muma & Kanjama Advocates filed a Notice of Change of Advocates on 20th November, 2023 purporting to take over conduct of the appeal for and on behalf of the Appellant, replacing the firm of T.K. Rutto. The document is of even date.



4. When this matter was placed before the Deputy Registrar Hon. S. Motari on 15th August, 2024 for directions, the following order was made regarding the representation of the Appellants by the firm of Muma & Kanjama:

Court: Appellant (sic) to regularize the issue of representation by filing consent from previous Counsel allowing the firm of Muma & Kanjama Advocates to come on record for the Appellant.

5. The order by the Deputy Registrar was obviously issued in line with Order 9 Rule 9 of the Civil Procedure Rules, which provides as follows:

Order 9 Rule 9: Change to be effected by order of court or consent of parties –

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.
6. It is apparent that it came to the attention of the Deputy Registrar that Muma & Kanjama were not properly on record for the Appellants and gave the Appellants and the said law firm time to regularize their appearance.
 7. I have combed through the physical file and the Judiciary Case Tracking System and I have no doubt that the firm of Muma & Kanjama failed to regularize its appearance as was ordered by the court, as no consent was filed to properly effect the change.
 8. The position in law, as was espoused in the case of Lions Bluff Lodge Limited v Francis Mwabula Mwanyefa [2018] eKLR, is that an advocate who acts for a party in proceedings in a lower court continues to have instructions in the next appellate court, unless the succeeding Advocate complies with Order 9 Rule 9. The firm of Muma & Kanjama is therefore not properly on record for the Appellants as they neither obtained leave of the court to appear for the Appellants nor filed a consent signed by T.K. Rutto to that effect.
 9. What then is the fate of the documents filed by Muma & Kanjama and the appeal herein?
 10. The procedure set out under Order 9 Rule 9 above is mandatory and thus cannot be termed as a mere technicality (see James Ndonyu Njogu v Muriuki Macharia [2020] eKLR). In the case of Lalji Bhimji Shangani Builders & Contractors v City Council of Nairobi [2012] eKLR, the Court held that:

“A party who without any justification decides not to follow the procedure laid down for orderly conduct of litigation cannot be allowed to fall back on the said objective for assistance and where no explanation has been offered for failure to observe the Rules of procedure the court may well be entitled to conclude that failure to comply therewith was deliberate.”

11. The jurisprudence that emerges from the authority of Chelule & another v Kuria & another (Appeal E001 of 2022) [2024] KEELC 88 (KLR) (24 January 2024) (Ruling) and that of James Ndonyu Njogu v Muriuki Macharia [2020] eKLR is that documents that are filed by a law firm that fails to abide by the mandatory provisions of Order 9 Rule 9 and that is therefore not properly on record, must be struck out.



12. To that end, all the documents filed in the present appeal by the firm of Muma & Kanjama, which include the Notice of Change of Advocates dated 20th November, 2023, the Record of Appeal dated 14th August, 2024 and the Appellant's submissions dated 24th September, 2024 are hereby struck out.
13. What then is left for the appeal? The orders/directions of the Deputy Registrar were clear to the parties on the timelines within which to file their respective documents in the appeal.
14. The Appellants, by failing to file a consent that would allow the firm of Muma & Kanjama to be properly on record, (which would in turn allow the said law firm to file documents and prosecute the appeal) failed to comply with the court's orders/directions. In the situation, I will follow the path that I took in the case of *Express Connections Limited v Laibuni* (Civil Appeal E1180 of 2023) [2024] KEHC 7339 (KLR) (20 June 2024) (Judgment), where I held as follows:
 - “3. The Court directed that the appeal proceeds by way of written submissions and gave the parties herein timelines for filing their respective submissions. The Respondent duly complied and filed her submissions. The Appellant did not file submissions. No reasons are on record as to why the Appellant failed to comply with the orders of the court.
 4. I will borrow from case law where the court (Mwangi Njoroge, J.) in the case of *Stephen Muthamia Marete & 2 others v Mary Naitore Kinyua* (enjoined as the legal representative of the Estate of Patrick Kinyua Iringo) [2018] eKLR, faced with a similar situation where an Appellant failed to file submissions in support of an appeal, observed and held as follows:

“In my view, when an Appellant has been ordered to file written submissions and he fails to do so as the Appellants have done in this case, the court should find, as it does in this case, that the appellant has failed to prosecute his appeal, or is no longer interested in pursuing it.”
 5. The court concluded as follows:

“I find that the Appellants have failed to prosecute their appeal. I hereby dismiss the appeal with costs for want of prosecution.”
 6. In the obtaining situation, I have no doubt that the Appellants has failed to prosecute its appeal and the only available avenue, in the circumstances, is to dismiss the same for want of prosecution, which I hereby do, with costs to the Respondent.”
15. The position that presents itself in the circumstances is that the Appellants have failed to prosecute their appeal and I will in the premises proceed to dismiss it for want of prosecution, with costs, which I assess at Ksh.40,000/-.

DELIVERED (VIRTUALLY), DATED & SIGNED THIS 24TH DAY OF JUNE, 2025.

JOE M. OMIDO

JUDGE

For Appellant: Mr. Khatete For Mr. Kanjama, Sc.

For Respondent: Mr. Opini.

Court Assistants: Mr. Ngoge & Mr. Juma.

