



**Adan & another v Gachari & 2 others (Environment & Land Case
148 of 2018) [2023] KEELC 15711 (KLR) (22 February 2023) (Ruling)**

Neutral citation: [2023] KEELC 15711 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 148 OF 2018
MN GICHERU, J
FEBRUARY 22, 2023**

BETWEEN

HASSAN SHABA ADAN 1ST PLAINTIFF

DANIEL KIPKORIR KOECH 2ND PLAINTIFF

AND

LUCY WANJIKU GACHARI 1ST DEFENDANT

LAND REGISTRAR, KAJIADO 2ND DEFENDANT

ATTORNEY GENERAL 3RD DEFENDANT

RULING

1. This ruling is on the notice of preliminary objection dated July 25, 2022. The said preliminary objection is based on five grounds and it challenges the notice of motion dated July 13, 2022.
2. The notice of motion dated July 13, 2022 seeks a stay of execution of the decree herein pending the hearing and determination of an intended appeal against the judgment dated May 30, 2022.
3. The notice of motion is filed by the firm of Isaiah Kandie and Company Advocates who also filed a notice of change of advocates on June 15, 2022. During the trial, the plaintiffs were represented by the firm of Itaya and Company Advocates.
4. It is this coming on record of the firm of Isaiah Kandie and Company Advocates without first filing an application with notice to all parties on record or filing a consent between them and the outgoing advocate and then obtaining a court order to effect the change of advocate that the preliminary objection is all about.



5. According to the first defendant/respondent, the application is irregular, misconceived, frivolous, vexatious and therefore an abuse of the court process for failing to comply with the mandatory provisions of order 9, rule 9 Civil Procedure Rules.
6. The preliminary objection is unopposed. On October 13, 2022 the court granted leave to the plaintiffs to reply to the preliminary objection. By January 15, 2023 which was the deadline to file the response and submissions, they had not filed anything. Even after the deadline nothing was filed. I am writing this ruling on mid February and still nothing has been filed. The respondents' counsel filed written submissions on August 18, 2022.
7. I have carefully considered the preliminary objection in its entirety including the provisions of order 9, rule 9, Civil Procedure Rules the entire record, the submissions as well as the case law relied upon. I find that the preliminary objection has merit for the following reasons.
8. Firstly, up to May 30, 2022 when the judgment was delivered, it was the firm of Itaya that was on record for the plaintiffs.
9. Secondly, the firm of Isaiah Kandie filed a notice of change of advocate on June 15, 2022.
10. Thirdly, no application was ever filed and served by the firm of Kandie to come on record in place of the firm of Itaya and Company Advocates. The alternative to such an application was the filing of a consent between the incoming and outgoing advocates. No such consent was ever filed.
11. Finally, the provisions of order 9, rule 9 are in mandatory terms. The rule reads 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 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”.
12. For the above stated reasons, I find the notice of motion dated July 13, 2022, irregular and an abuse of the court process. I strike it out with costs to the first defendant.

It is so ordered.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 22ND DAY OF FEBRUARY, 2023.

M.N. GICHERU

JUDGE

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JUSTICE M.N. GICHERU RULING ELC 148/2018 2

