



Murkuk & another v Koros & 4 others (Environment & Land Case 33 of 2021) [2023] KEELC 15768 (KLR) (21 February 2023) (Ruling)

Neutral citation: [2023] KEELC 15768 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
ENVIRONMENT & LAND CASE 33 OF 2021
EM WASHE, J
FEBRUARY 21, 2023**

BETWEEN

JAMES KISWA MURKUK 1ST PLAINTIFF

ANNAH CHEPKERUI MURKUK 2ND PLAINTIFF

AND

JOHANA KIPLANGAT KOROS 1ST DEFENDANT

SARAH SEKENTO KIMEI 2ND DEFENDANT

STEPHEN SALATON 3RD DEFENDANT

LAND REGISTRAR TRANSMARA 4TH DEFENDANT

ATTORNEY GENERAL 5TH DEFENDANT

RULING

1. The application for determination dated November 2, 2022 (hereinafter referred to as “the present application”) was filed by the 1st and 2nd Plaintiffs (hereinafter referred to as “the Applicants”) seeking for the following Orders; -
 - i. That this honourable court be pleased to certify this application urgent and it be pleased to hear this Application on priority basis.
 - ii. That this honourable court be pleased to grant and order for reinstatement of this suit on such terms as deems fit and just.
 - iii. That this honourable court be pleased to expunge the notice of appointment on record by the firm of Job Obure & Company Advocates showing the firm to be appearing for the Defendants.



- iv. That costs of and incidental to this application be provided for.
 - v. That this court be pleased to grant any other and/or further orders as it may deem fit to grant in the interest.
2. The prayers sought hereinabove have been supported by the grounds contained in the body of the application and further collaborated by the Affidavit sworn on the November 2, 2022.
 3. The Grounds pleaded by the Applicant can be summarised as follows; -
 - a. The Applicants were faced with network and/or online access challenges and consequently therefore unable to participate in the proceedings of 1/11/2022.
 - b. There was an understanding between the Counsel for the Applicants and the Respondents to adjourn the matter on the 1/11/2022 as Counsel for the Defendant was to attend an interview with the Judicial Service Commission for the position of a Judge.
 - c. Although the Applicants Counsel was not able to access and join the Court's virtual platform, the Applicants were present in Court on the 1/11/2022.
 - d. The Applicants are therefore desirous of the suit to be reinstated and prosecute the same to its conclusion.
 - e. The Notice of Appointment filed by the Firm of Job Obure & Company, Advocates on the 2nd of November 2022 by mistake indicated that the firm of Job Obure & Company, Advocates was taking over the conduct of the matter on behalf of the Defendants yet it was to take over the conduct on behalf of the Plaintiffs.
 - f. Consequently therefore, the Applicants seek that the Notice of Appointment dated November 2, 2022 be expunged by the Court.
 4. The present Application was indeed served and Counsel for the 1st, 2nd and 3rd Respondents opposed the same by filing a Statement of Grounds of Opposition dated March 11, 2022.
 5. The 1st, 2nd and 3rd Respondents' grounds for opposing the Application herein were as follows; -
 - i. The Application offended the provisions of Order 9 Rule 9 of the Civil Procedure Rules, 2010.
 - ii. The Application does not disclose any reasonable cause of action.
 - iii. The Application has not captured and/or established any prima facie case.
 - iv. The Applicants are guilty of concealment, misrepresentation and suppression of material facts and therefore not entitled to the Court's orders.
 - v. The application is misconceived, mischievous and bad in law.
 6. The Court then directed the present application to be canvassed by way of written submissions of which the Applicants filed their submissions on the 30th of November 2022 while the Respondents filed their submissions on December 15, 2022.
 7. The Court upon perusing the present application before it, the response from the Respondents as well as the submissions filed by both parties, the issues for determination are as follows; -

Issue - Should the notice of appointment filed by the firm of Job Obure & Company, Advocates No 1 be expunged?



- Issue - Is the applicant entitled to the orders sought in the application dated November 2, 2022.
No 2
Issue - Who bears the costs of this application?
No 3
8. The Court having identified the above issues for determination, the same are therefore discussed and analysed as herein below.

Issue No 1- Should the Notice of Appointment Filed by the Firm of Job Obure & Company, Advocates be Expunged?

9. The Applicants prayer No 3 in the application before the Court seeks for the expunging of the Notice of Appointment dated 2nd of November 2022 by the firm of Job Obure & Company, Advocates.
10. The Notice of Appointment dated November 2, 2022 pronounces the taking over of this matter by the firm of Job Obure & Company, Advocates in place of S Mogere & Company, Advocates.
11. The firm of S Mogere & Company, Advocates was representing the Plaintiffs herein.
12. However, the Applicants in their grounds of the present application have indicated that the Notice of Change of Advocates referenced to the firm of Job Obure & Company, Advocates as acting for the Defendants instead of the Plaintiffs as instructed.
13. Consequently, due to this mistake of referring to the instructing clients as the Defendants and not the Plaintiffs, the entire Notice of Change of Advocates should be Expunged.
14. The Court has indeed looked at the present application as well as the affidavit in support and note that the Notice of Change of Advocates being sought to be Expunged has not been identified by the date it was signed and/or filed in Court.
15. The only Notice of Change of Advocates found in the file is dated November 2, 2022 and filed on the 3rd of November 2022.
16. The Notice of Change of Advocates dated November 2, 2022 clearly stated that the firm of Job Obure & Company, Advocates was taking over the matter from the firm of S Mogere & Company, Advocates who act for the 1st and 2nd Plaintiff.
17. Consequently therefore, the Court has not been provided with the Notice of Change creating the impression that the firm of Job Obure & Company, Advocates was to act for any of the Defendants in this matter.
18. In essence therefore, the Court cannot exercise its jurisdiction in vain by expunging a document that is not within its records and/or placed before it.
19. In a nutshell, the Applicants prayer no 3 is hereby declined.
20. Be as it may, the Notice of Change of Advocates dated November 2, 2022 was filed after the Court had dismissed this suit on the 1st of November 2022.
21. The Respondents have raised the issue of non-compliance with Order 9 Rule 9 of the [Civil Procedure Rules, 2010](#).
22. The Respondents submitted that the Court through its Ruling dated November 1, 2022 had determined the suit through a dismissal, and therefore any advocate who intended to come on record after the 1st of November required to do so with leave of the Court.



23. Indeed, the Court record confirms that the Plaintiffs/Applicants suit was concluded by way of a ruling dismissing the same for lack of prosecution.
24. In other words, there was a determination of the suit by the Court on the 1st of November 2022 while the firm of S Mogere & Company, Advocates was still on record.
25. Any change of advocates by any party after the 1st of November 2022 could only be done with the leave of the Court as provided under Order 9 Rule 9 of the [Civil Procedure Rules, 2010](#).
26. Unfortunately, the firm of Job Obure & Company, Advocates filed their Notice of Change of Advocates on the 3rd of November 2022 in reliance of Order 9 Rule 5 of the [Civil Procedure Rules, 2010](#).
27. Order 9 Rule 5 of the [Civil Procedure Rules, 2010](#) provides that a Notice of Change of Advocates can be filed without leave anytime before the conclusion of the cause or matter.
28. Clearly therefore, the Court having dismissed the suit on the 1st of November 2022, the Plaintiffs suit had been concluded and any change of advocates thereafter could only be done by way of a formal application and granting of leave by Court.
29. In other words, the Notice of Change of Advocates by the firm of Job Obura & Company, Advocates dated November 2, 2023 and filed in Court on the November 3, 2022 is irregular and contravenes the provisions of Order 9 Rule 9 of the [Civil Procedure Rules, 2010](#).
30. In the present application before the Court, there is also no prayer seeking for leave to allow the firm Job Obura & Company, Advocates to come on record in place of S Mogere & company, Advocates.
31. The net effect of it is that the Notice of Change of Advocates filed on the November 3, 2022 by the firm of Job Obura & Company, Advocates can not be regularised by the present application even if the Court was showing mercy to the Plaintiffs.
32. In conclusion therefore, the Notice of Change of Advocates dated November 2, 2022 and filed in Court on the 3rd of November 2022 by the firm of Job Obura & Company, Advocates to act for the Plaintiffs be and is hereby expunged from the Court records for being irregular and in contravention of Section 9 Rule 9 of the [Civil Procedure Rules, 2010](#).

Issue No 2- Is the Applicant Entitled to the Orders Sought in the Application Dated November 2, 2022.

33. The Court having made a finding that the Notice of Change of Advocates dated November 2, 2022 and filed on November 3, 2022 by the firm of Job Obura & Company, Advocates was irregular and in contravention of Order 9 Rule 9 of the [Civil Procedure Rules, 2010](#), then such a notice did not have any legal effect on the issue of representation.
34. Consequently therefore, the present application before court is filed by a firm which is not properly on record having not obtained leave to come on record.
35. The present application is therefore irregular and the Court has no jurisdiction to entertain the same and/or make any legal pronouncements on the issues raised therein.
36. The present application before court filed by the firm of Job Obura & Company, Advocates is therefore pre-mature before the issue of representation is concluded and should not be entertained.

Issue No 3- Who Bears the Costs of this Application?

37. Lastly, the costs usually follow the outcome of the proceedings.



38. In this present application, the Applicants have not been successful and therefore should bear the costs of this Application.
39. In conclusion therefore, the Court hereby makes the following Orders as appertains the Application dated November 2, 2022; -
- a. That notice of change of advocates dated November 2, 2022 and the subsequent application dated November 2, 2022 be and are hereby struck out.
 - b. Costs of the application herein shall be borne by the applicants.

DATED, SIGNED & DELIVERED VIRTUALLY IN KILGORIS ELC COURT ON 21ST FEBRUARY 2023. EMMANUEL.M.WASHE

JUDGE

IN THE PRESENCE OF:

COURT ASSISTANT: NGENO

ADVOCATES FOR THE APPLICANT: OBURE

ADVOCATES FOR THE RESPONDENTS: OCHWANGI FOR 1st, 2nd & 3rd Respondents

