



**Katwa Kigen & Kemboy Advocates v Reinhard (Miscellaneous Application
45 of 2022) [2023] KEELC 871 (KLR) (15 February 2023) (Ruling)**

Neutral citation: [2023] KEELC 871 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
MISCELLANEOUS APPLICATION 45 OF 2022
EK MAKORI, J
FEBRUARY 15, 2023**

BETWEEN

KATWA KIGEN & KEMBOY ADVOCATES ADVOCATE

AND

JOYCE REINHARD CLIENT

RULING

1. Joyce Reinhard has presented a Preliminary Objection, claiming that the firm of Chepkwony & Associates does not represent her in this action or any other matter and that the filing of Party and Party costs dated 25th October 2022 was made fraudulently and without her knowledge.
2. The said firm has responded by saying that at no time has it been removed from the record nor has the Respondent intimated or filed any documents to act in person.
3. Parties were directed to file written submissions. They obliged.
4. Whether Chepkwony & Associates still represents the Respondent is the question at hand. The client disagrees. The Advocates insist that they are still acting for her.
5. It is quite strange that the Advocate and Client are wrangling on representation oblivious of the Reference filed and dated 4th October 2022. The Preliminary Objection is not targeted at the said Reference at all.
6. The Preliminary Objection does not meet the threshold as enunciated in *Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd* [1960] EA 696 at page 700 paragraphs D-F Law JA as he then was had this to say: -

“...A Preliminary Objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose



of the suit. Examples are an objection to the Jurisdiction of the court or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”

Newbold, P: -

“A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.”

7. The Preliminary Objection raised here seeks that this court declares the firm of Chepkwony and Associates incompetent to represent the client – Joyce Reinhard. The procedure to do so is as provided for in Order 9 Rule 8 of the Civil Procedure Rules: -

Notice of intention to act in person [Order 9, rule 8.]

“Where a party, after having sued or defended by an advocate, intends to act in person in the cause or matter, he shall give a notice stating his intention to act in person and giving an address for service within the jurisdiction of the court in which the cause or matter is proceeding, and the provisions of this Order relating to a notice of change of advocate shall apply to a notice of intention to act in person, with the necessary modifications.”

8. At this point, Joyce Reinhard, the client, can only pursue her goal against the Advocate in the manner described above.
9. The Preliminary Objection is dismissed. Guns should be trained on the reference that was filed on 4th October 2022.

DATED, SIGNED, AND DELIVERED AT MALINDI VIRTUALLY IN OPEN COURT ON THIS 15TH DAY OF FEBRUARY 2023.

E. K. MAKORI

JUDGE

In the Presence of: -

M/s Metto Advocate for the Client

In the Absence of: -

Katwa Kemboy Advocates

M/s Joyce Reinhard Client

