



**Virani v Nanji (Environment & Land Case 261 of 2013)
[2023] KEELC 20359 (KLR) (5 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 20359 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT & LAND CASE 261 OF 2013**

E ASATI, J

OCTOBER 5, 2023

BETWEEN

NIZAR HASHAM VIRANI PLAINTIFF

AND

SHAMSUDIN GULAMHUSEIN NANJI DEFENDANT

RULING

1. This Ruling is in respect of the Notice of Motion application dated 23rd August, 2023 brought under Certificate of Urgency pursuant to the provisions of Section 1A, 1B, 3 and 3A of the [Civil Procedure Act](#), Order 50 Rule 5 and Order 51 Rule 1 of the [Civil Procedure Rules, 2010](#).

The application seeks for orders that;

- a. Leave be granted to the firm of Owiti, Otieno & Ragot Advocates to come on record for the Defendant in place of M/s Taib A. Taib Advocates;
 - b. That costs of the application be provided for.
2. The applicant's case is that Judgement was delivered in the matter on 24th October, 2017. That the Defendant unfortunately passed away before full actualization of the terms of the judgement. That his interests in the suit are currently being pursued by Farrah Nanji and Shabin Nanji the Legal Representative of his estate and the appointed executor of the deceased Defendant's Last Will and Testament. That there is however a dispute on the fee between the said Representatives of the deceased Defendant and the firm of Taib A. Taib Advocates. That the said firm of Advocates has now sued the Representatives in Kisumu HCCCOM. Case No.E006 of 2023, Taib A. Taib –vs- Farrah Nanji (Sued as Legal Representative of the estate of Shamsudin Gulamhusein Nanji – Deceased & Another). That the relationship between the estate of the deceased Defendant and his Advocates currently on record, M/s Taib A. Taib has irretrievably broken down and the legal representatives` of the said estate have now instructed the firm of Owiti, Otieno & Ragot Advocates to represent the estate in this matter



until such a time when the full terms of the judgement will have been realized. That it is therefore in the interest of justice that the firm of Owiti, Otieno & Ragot Advocates be allowed to come on record to represent the best interests of the estate of the deceased Defendant.

3. The application was supported by the contents of the Supporting Affidavit sworn by Farrah Nanji on 21st August 2023 and the annexures thereto.
4. The application was opposed by the firm of Taib A. Taib vide the contents of the Replying Affidavit sworn by Taib Ali Taib Bajaber SC, MBS, on 22nd September, 2023. Counsel deposed that his firm has been representing the Defendant since it entered appearance on 14th June, 2014 with instructions to safeguard the Defendant's rights over the suit property namely, Kisumu/Kogony/2642, Kisumu Beach Resort Hotel.
5. That the firm successfully defended the Defendant and judgement was entered by Hon. Justice S.M. Kibunja on 24th October, 2017 in favour of the Defendant in validating his rights over the suit property. That the Defendant unfortunately passed away and his firm took steps to substitute him with Farrah Nanji and Shabbin Nanji as the Executors/Legal Representatives of the deceased. That he engaged the firm of M/s Kimanga & Company Advocates for the Plaintiff to conclude the matter in the best interest of the Defendant's estate and facilitated the signing of a written consent dated 5th March, 2021 and filed in court on 15th March, 2021 whose compliance by the parties would finally settle the dispute.
6. That on 21st April, 2021, the firm forwarded original mutation forms to Farrah Nanji and Shabbin Nanji and an unsigned application for re-sealing of the Grant obtained by the Administrators of the Estate of the deceased in Canada. That despite several correspondences, they failed and/or refused to sign the mutation forms which was the only pending issue that was holding the conclusion of the suit. That although his firm has filed suit in Kisumu HCCCOM. No.E6 of 2023, the Applicant's firm is guilty of material non-disclosure. That the present application has been made only for purposes of attempting to deny the Defendant's Advocates the opportunity to recover their fees for work successfully done and completed in the matter.
7. That the law was amended to prevent change of Advocate after the event of judgement to ensure that Advocates are not short-changed of their right to recover their fees which they are entitled to. That it is in the interest of justice and fairness that the applicant's Notice of Motion be dismissed with costs.
8. The application was argued orally on 25th September, 2023.
9. I have taken into account the contents of the Notice of Motion, Supporting Affidavit and annexures, Replying Affidavit and the annexures thereto. The provisions on change of advocates after entry of judgement are found in Order 9 Rule 9 of the [*Civil Procedure Rules 2010*](#), which provides that;
 - when there is a change of Advocate, or when a party decides to act in person having previously engaged an Advocate, after judgement has been passed, such change or intentions to act in person shall not be effected without and 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 purposed advocate and the proposed incoming advocate or party intending to act in person as the case may be”
10. In the present case, the Advocates on record and the proposed incoming Advocate did not record consent on the matter hence the application. The law envisages a situation like the one prevailing



in the present case and requires that the advocate currently on record is notified and given a chance to participate vide the application. The interest of the firm of Advocate currently on record is their professional fees. It is not denied that the said firm has filed a suit for recovery of the fees. It has not been demonstrated that the said suit is inadequate to address the issue of professional fees.

11. This matter has stayed in abeyance since 21st April, 2021 when the Advocates currently on record forwarded the mutation forms and other documents to the applicants for execution, who declined to sign to date.
12. It is in the interest of justice that the stalemate on representation be settled to enable conclusion of the matter.
13. I find that the application has merit and allow it. Each party to bear own costs.

RULING, DATED AND SIGNED AT KISUMU, READ VIRTUALLY THIS 5TH DAY OF OCTOBER, 2023 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.

E. ASATI

JUDGE.

