**Gathenya and another v Muheria**

**Division:** Court of Appeal of Kenya at Nairobi

**Date of judgment:** 14 March 2005

**Case Number:** 343/04

**Before:** Deverell AJA

**Sourced by:** LawAfrica

*[1] Advocate – Change of advocate at the Court of Appeal – Notice of change of advocates must be filed*

*with the registrar.*

**JUDGMENT**

**Deverell AJA:** I have considered the submissions put to me by counsel for the intended appellant, applicant and the respondent to the application on the issue of representation. The issue raised is whether the firm of Wangai Nyuthe and Company is properly on record before this Court to represent the intended appellant. The counsel for the intended appellant claim to be properly on record by virtue of the alleged fact that they are properly on record in the High Court. In support of that assertion they rely on the consent letter dated 16 December 2004 filed on 24 January 2005 signed by the undisputed original advocates for the defendants Mohamed Muigai Mboya Advocates (hereinafter the original advocates) and signed by Wangai Nyuthe and Company (hereinafter the new advocates). It is contended that this consent letter became an order of the High Court by some process of minuting in the High Court as to which no evidence has been produced before me. I do not consider the evidence sufficient to establish that there was an Order of the High Court recognising the change of advocates in the High Court sufficient to comply with Order III, rule 9(*a*) of the Civil Procedure Rules. However, even if the position had been so established in the High Court I do not consider that the new advocates would without move have come properly as record in this Court. The notice of appeal was signed by the original advocates as advocates for the intended appellants. They, thus, came on record in this Court. Rule 23(1) of the rules of the Court of Appeal clearly stipulates that where a party (in this case the intended appellant) having been represented by an advocate (in this case the original advocates by virtue of the notice of appeal) decides to change his advocate he shall, as soon as possible, lodge with the registrar a notice of change. No such notice of change has been lodged. In these circumstances, I find that the new advocates are in breach of the rules of this Court and are not entitled at the moment to represent the intended appellant in applying for and conducting an application for extension of time for filing the record and memorandum of appeal out of time. I, therefore, allow the respondents preliminary objection. For the appellant:

*Information not available*

For the respondent:

*Information not available*