



Brian Njau & Company Advocates v Ounda & 4 others (Miscellaneous Application E021 of 2023) [2024] KEHC 14883 (KLR) (Judicial Review) (28 November 2024) (Ruling)

Neutral citation: [2024] KEHC 14883 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
MISCELLANEOUS APPLICATION E021 OF 2023
JM CHIGITI, J
NOVEMBER 28, 2024**

BETWEEN

BRIAN NJAU & COMPANY ADVOCATES APPLICANT

AND

NICHOLAS OUMA OUNDA 1ST RESPONDENT

MATILDA ACHIENG AIYERA 2ND RESPONDENT

RICHARD OUMA ONGUNDI 3RD RESPONDENT

DENNIS OKIDI 4TH RESPONDENT

MAURICE OTIENO 5TH RESPONDENT

RULING

1. The application before this Court is the amended Chamber Summons dated 26th June 2024. The application is brought under Order 9 Rule 13, and section 1A, 3 and 3A of the [Civil Procedure Act](#). It seeks the following orders:
 - i. The firm of Mungai Githinji & Company Advocates, currently representing the Respondents, be granted leave to cease further acting for the said Respondents
 - ii. The Costs of this application be provided for.
2. The application is supported by an amended Supporting Affidavit of one Dennis Mungai Githinji sworn on even date.
3. The firm of Mungai Githinji & Co. Advocates received instructions from the Respondents herein to represent them in this matter.



4. The Applicant deponed that the firm took up the instructions and attended court as advocates for the Respondents however since the last court appearance on 31st October 2023, the firm of advocates has not received any instructions from the Respondents on how to prosecute the matter.
5. The Applicant further deponed that they despite efforts to reach the Respondents, they could not reach them through the contacts furnished to them.
6. The application to cease action has not been opposed by the Respondents. I have not traced on the record any replying affidavit(s) filed by the respondents following service upon them of the applicants' application under consideration served upon them via WhatsApp on their registered phone numbers 0723XXXX78, 0721XXXX94, 0724XXXX45, 0721XXXX43 and 0725XXXX74 as borne out by the contents of the return of service sworn by Dennis Solomon Githinji Mungai on 29th July, 2024.
7. The formal application for leave to cease acting must be served on the party that the Advocate is on record for, and the Advocate should stop attending court only after court has granted leave to cease acting.
8. It is part of the courtesies that Advocates are expected to extend to the courts for the sake of good order. An Advocate comes on record formally, by filing a notice of appointment or notice of change of Advocates, which ought to be served on all the parties on record. Conversely, when an Advocate has to get out of the matter or the record, they have to do so formally, either upon leave of court vide an application to cease acting, or by way of another Advocate coming on record by filing a notice of change of Advocates.
9. Order 5 Rule 22C of the *Civil Procedure Amendment Rules* 2020, allows service of summons to be effected by use of mobile-enabled messaging Applications by sending summons to the Defendant's last known and used telephone number.
10. In light of the above, I am satisfied that the respondents had notice of the application but elected not to contest it.
11. The applicants' firm of advocates wants to cease acting on behalf of the respondents because the Respondents have not given them further instructions on how they would like to prosecute their case.
12. In the Supreme Court case Petition (Application) No. E033 OF 2023, (Being an application by M/s Mbugua Ng'ang'a & Co. Advocates to cease acting for the 2nd respondent) where Justice SC Wanjala stated:-

“I opine that, a court of law cannot compel counsel to continue acting for a party, who has lost touch or interest in the matter for whatever reason.”

Disposition;

13. I am satisfied the uncontested position herein and find merit in the applicant's application as the applicants' clients were duly notified of the contents of the application under consideration through alternative service via their personal phones and elected not to contest the application.

Order:

1. The Application is allowed.
2. Costs in the cause.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 28TH DAY OF NOVEMBER 2024.



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J. CHIGITI (SC)
JUDGE

