



REPUBLIC OF KENYA



**In re Estate of Isabella Gicheha (Deceased) (Succession Cause 3056 of 2015)
[2023] KEHC 22110 (KLR) (Family) (27 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 22110 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY**

SUCCESSION CAUSE 3056 OF 2015

EKO OGOLA, J

JUNE 27, 2023

IN THE MATTER OF THE ESTATE OF ISABELLA GICHEHA

RULING

1. The Application before me is dated 12th September 2022. The Applicant who is the Advocate for the Administrators prays for the following:-
 - a. That the firm of Kibatia & Company Advocates LLP be granted leave to cease acting for Harrison Chomba Gicheha and Samson Ngahu Gicheha, the Administrators herein.
 - b. That cost of this application be borne by the administrators.
2. The Application is based on the grounds set therein and the Supporting Affidavit of Karuga Maina a Partner of Kibatia & Company Advocates LLP. It is averred that the Administrators instructed the firm of Kibatia & Company on 23rd November 2017 when the firm took over from the firm of Orenge & Odhiambo Advocates. Mr. Maina deposed that the firm has been trying to obtain further instructions through telephone calls, emails, and letters but their efforts have been in vain. It is in these circumstances that the firm ceases acting for the Administrators.
3. So, should the firm of Kibatia & Company be allowed to cease acting for the Administrators?
4. Order 9, rule 13 of the [Civil Procedure Rules](#), 2010 provides as follows: -

“ 13.

- (1) Where an advocate who has acted for a party in a cause or matter has ceased so to act and the party has not given notice of change in accordance with this Order, the advocate may on notice to be served on the party personally or by prepaid post letter addressed to his last-known place of address, unless the court otherwise



directs, apply to the court by summons in chambers for an order to the effect that the advocate has ceased to be the advocate acting for the party in the cause or matter, and the court may make an order accordingly:

Provided that, unless and until the advocate has —

- (a) served on every party to the cause or matter (not being a party in default as to entry of appearance) or served on such parties as the court may direct a copy of the said order; and
- (b) procured the order to be entered in the appropriate court; and
- (c) left at the said court a certificate signed by him that the order has been duly served as aforesaid, he shall (subject to this Order) be considered the advocate of the party to the final conclusion of the cause or matter including any review or appeal.”

5. In *Eunice Wairimu Muturi & Another vs. Ruth Nyambura Chuchu & 2 Others* (2013)eKLR, it was held that the only requirement for an Advocate wishing to withdraw from acting in the provisions is to give notice to all affected parties and that once the court is satisfied that this requirement has been met, it has no reason not to grant leave. The Applicants have annexed a letter notifying the Administrators that due to lack of instructions from them, the firm would cease acting. This letter was electronically served by way of WhatsApp to Harrison Gicheha. There was no response from them.
6. Order 9 Rule 13 requires that the Advocate makes the application by summons in chambers on notice to the client personally. In *Bayusuf Brothers & Another vs. Mathew Mureithi* (2005) eKLR Justice Dulu held that rules of procedure are meant to serve a specific purpose and should be followed. An Affidavit of Service on record illustrates that this requirement was complied with.
7. The upshot is that the Chamber Summon Application dated 12th September 2022 is merited.
It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 27TH DAY OF JUNE 2023.

E.K. OGOLA

JUDGE

