



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MALINDI

Civil Suit 9 of 2007

MOLE MBITHA MOLEPLAINTIFF

VERSUS

ANGORE MBITHA MOLE DEFENDANT

R U L I N G

When this matter came up for hearing on 22-04-10, Mr. Maina who is on record for the defendant, sought to prosecute a Chamber Summons application dated 9th March 2010 made under Order III Rule 12. It seeks that the firm of Stephen Macharia Advocate be granted leave to withdraw from acting for the defendant for want of instructions.

The defendant did not attend court for hearing of this application.

In the supporting affidavit sworn by the advocate, he depones that defendant has not instructed him in the matter for a long time and he does not know what has become of him. He further states that defendant seems to have ignored this matter despite many letters written to him, calling upon him to avail himself with instructions on how the matter should proceed – the letters dated 10th September 2009, 15th December 2009 and 19th January 2010 are annexed and marked A.

Mr. Mwadilo who held brief for Mr. Mabeya for the plaintiff said the application did not affect the plaintiff and so he had no objection to it. From the letters exhibited, coupled with what is deponed, it would appear that defendant has failed to heed to the advocate's requests for him to give further instructions. A letter dated 9th December 2009 written by Anderson Mole Munyanya, on behalf of the defendant simply said that they had no intention of transferring the file to any other advocate up to the final stage – however defendant's conduct suggests otherwise – he doesn't even acknowledge the letters written to him after that letter of 09-12-09. Surely it will be unfair to pin counsel to act on a matter where instructions are not forthcoming and his client ignores all his correspondences.

I find that the application is merited and I grant leave to the firm of Stephen Macharia Kimani Advocate to cease acting for the defendant forthwith.

Delivered and dated this 24th day of **June 2010** at Malindi.

H. A. Omondi
JUDGE

Mr. Mwadilo holding brief for Omari of S. K. Kimani
Mr. Shujaa holding brief for Mabeya