



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)

Winding Up Cause 47 & 48 of 1993

THE MATTERS OF SOLAR SALT LTD AND KRISHNA PROPERTIES LTD

AND

IN THE MATTER OF COMPANIES ACT

RULING

The firm of Rustam Hira Advocate has applied by way of chamber summons an application to cease to act for the petitioner hereof. The grounds of that application are; that the petitioner's advocate has not received instructions from the petitioner despite having informed him on several occasions that the matter was coming up for hearing on 7th December, 2005; that the petitioner's advocate had notified the petitioner of his intention to withdraw unless he is instructed and there has been no reply from the petitioner thus necessitating this application. The affidavit in support of the application reiterated the grounds thereof.

Unusually so the application was opposed by the petitioner who averred that the petitioners advocate was instructed in 1993 to prosecute the petition but had failed to do so 13 years later; that on his attendance at the petitioner's advocate's office he was always assured that "**everything is okay**"; that he had paid to his advocate kshs 55, 000/-.

Although the petitioner's advocate filed a further affidavit, it does seem that, that affidavit, together with the petitioner's submissions in court have more to do with an issue relating to the advocate's fees. I am of the view that in application for leave to cease to act has little, if any, to do with whether fees have been paid, and the fact a party has paid fees cannot be a reason to refuse to grant an order to the advocate to cease to act. I am of that persuasion because of Order II Rule 12 (1) of the Civil Procedure, which provides:

"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:"

The above quote clearly shows that the act of ceasing to act is at the instance of the advocate, who once he does cease to act, without necessarily assigning any reason for ceasing to act, moves to the court for an order that he has ceased to be an advocate acting for the party. That order is granted on provision

that; the order of the court that the advocate has ceased to act has to be served on all parties in the action, except those in default of appearance and that such an advocate files a certificate signed by him in court, certifying that he has extracted the order and served the parties in the action as aforesaid. Order III Rule 12 (1) provides that if the advocate does not serve the parties as stated hereinbefore and has not filed a certificate to certify such service he continues to be an advocate in the action.

Since that is what is provided in the rules the objection raised by the petitioner is misplaced. The petition may have to consider to move in another matter in regard to the issue of advocate's fees.

The advocate having intimated in various correspondence to the petitioner that he had cease to act, the court will grant the order sought bearing in mind the provision stated herein above.

The court grants the following orders; -

- (1) That Rustam Hira Advocate has ceased to be the Advocate for the Petitioner herein.**
- (2) That there shall be no orders as to costs of the chamber summons dated 5th December 2005.**

MARY KASANGO

JUDGE

Dated and delivered this 29th May 2005.

MARY KASANGO

JUDGE