



**Kang’ethe v Kiarie (Civil Appeal E006 of 2024) [2025] KEHC 8205 (KLR) (23 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 8205 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT GARSEN  
CIVIL APPEAL E006 OF 2024**

**JN NJAGI, J**

**MAY 23, 2025**

**BETWEEN**

**BONIFACE KAMAU KANG’ETHE ..... APPLICANT**

**AND**

**SUSAN WAITHERE KIARIE ..... RESPONDENT**

**RULING**

1. The appeal herein was filed by the firm of Wesonga Wamalwa & Kariuki Associates, Advocates vide a memorandum of appeal dated 31<sup>st</sup> July 2024. The appellant was Boniface Kamau Kangethe.
2. The matter came up for directions on 25<sup>th</sup> April 2025 when the Appellant, Mr. Kangethe informed the court that he had filed a notice withdrawing the appeal. Mr. Wamalwa objected to the withdrawal of the appeal on the ground that Mr. Kangethe had no capacity to withdraw the same. He sought for time to file an application challenging the withdrawal. The court granted him time to do so.
3. The matter came up for mention on 16<sup>th</sup> May 2025 when Mr. Wamalwa said that he had filed an application dated 15<sup>th</sup> May 2025 stating that his firm was representing the Appellant, having been appointed by the Appellant’s insurance company. Mr. Gachau, Advocate, then told the court that the Appellant had appointed him to represent him in the matter. Mr. Wamalwa objected to the appointment on the ground that his firm was the one still on record for the Appellant. That they were on record from the initial suit at the Magistrate’s Court. That if Mr. Gachau wanted to come on record, he should have filed an application to come on record as he could not have come on record without instructions from the insurance company who had appointed Mr. Wamalwa’s firm to act for the Appellant. Mr. Wamalwa submitted that it was not sufficient to file Notice of Appointment of Advocate.
4. In reply, Mr. Gachau stated that the Appellant had earlier filed a Notice to appear in person and subsequently appointed his firm to follow up his notice of withdrawal of the appeal. He submitted that an appeal is a separate proceeding from the suit at the lower court. That the appeal was in the



name of Mr. Kangethe. That Mr. Wamalwa was representing the insurance company. He submitted that it is only where judgment has been delivered where an advocate is required to apply for leave to come on record. Therefore that they did not require leave to come on record nor did they need to file an application. That the appellant had withdrawn instructions from counsel. That order 9 of the Civil Procedure Rules, 2010, is meant to prevent a litigant from dishonouring instructions from counsel where judgement has been entered which is not the case in this matter.

5. Mr. Kilonzo for the Respondent on his part submitted that the issue of representation does not arise after the suit was withdrawn. That Mr. Wamalwa could not purport to represent the appellant in a suit that does not exist. That Mr. Wamalwa was appointed by Trident Insurance Company. That the suit ended the moment the appeal was withdrawn.
6. I have considered the issues raised in the matter. The issues for determination is whether Mr. Gachau is properly on record for Mr. Kangethe. Mr. Gachau said that he has filed a notice of appointment of advocate. That he did not need to seek leave to come on record as Mr. Kangethe had earlier on filed a notice to act in person.
7. It is not in dispute that Mr. Kangethe filed a notice to act in person after which he filed a notice withdrawing the appeal. Mr. Wamalwa argues that Mr. Kangethe has no capacity to withdraw the appeal.
8. I have considered the arguments by the respective advocates for the parties. It is clear to me that there is a dispute between the Appellant and his insurance company on whether he has capacity to withdraw the appeal. Mr. Wamalwa was appointed by the insurance company to represent them in the appeal. The appellant argues that the advocate for the insurance company does not act for him in the appeal. Therefore that he is at liberty to appoint a counsel of his choice to represent him in the matter.
9. In view of the fact that there is a dispute between the Appellant and his insurance company on whether the appellant has the capacity to withdraw the appeal. I am of the view that the Appellant should be allowed to appoint an independent advocate to represent him in the dispute. Mr. Wamalwa was appointed by the insurance company to represent their interest in the appeal. He cannot thereby represent the appellant in the current dispute as there will be a conflict of interest. It is only fair and just to allow Mr. Gachau to represent the appellant in that dispute. The other issues raised herein will be dealt with in Mr. Wamalwa's application dated 15<sup>th</sup> May 2025.
10. Consequently, Mr. Gachau is allowed to be on record to represent the appellant in the application dated 15<sup>th</sup> May 2025.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT GARSEN THIS 23<sup>RD</sup> DAY OF MAY 2025.**

**J. N. NJAGI**

**JUDGE**

In the presence of:

Mr. Gachau for Mr. Kangethe

Mr. Wamalwa for Trident Insurance Company

Mr. Kilonzo for Susan Waithera Kiarie

Court Assistant - Ndonye

