



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MALINDI**

**CIVIL SUIT NO. 1 OF 2018**

**BRIDGE INTERNATIONAL ACADEMIES.....PLAINTIFF/RESPONDENT**

**VERSUS**

**DENNIS KHASAMBA OGESA.....DEFENDANT/APPLICANT**

**CORAM: Hon. Justice R. Nyakundi**

**Mungai Victor Kimani for the Plaintiff/Respondent**

**Mwaure & Mwaure Waihiga for the Defendant/Applicant**

**RULING**

This is an application brought under Order 9 Rule 13 (1) of the Civil Procedure Rules seeking the following orders:

- (a). That Mwaure & Mwaure Waihiga Advocates have ceased to be the Advocates for the defendant in this suit.*
- (b). That costs to be in the cause.*

The grounds upon which this application is premised are set out as follows:

- (1). That the defendant herein has been un-co-operative with his advocates on record and this has made it extremely difficult to represent the client.*
- (2). That there are no proper, precise or appropriate instructions for the advocate to proceed with the matter given the current relationship between the Advocate and the client.*

The respondent was duly served with the application but as at the time of canvassing it, there was no opposition to it.

**Determination**

The right to instruct legal counsel is provided for under Article 50 (2) (G) of the Constitution on a right to a fair hearing. Once the instructions are issued to an Advocate by a client to retain his or her services it is a matter of privity of contract which governs the relationship.

It is evident here from the applicant that in particular to this retainer, the applicant firm has demonstrated lack of co-operation of instructions from the respondent to continue offering professional legal services.

In applying the provisions of Order 9 Rule 13 (1) of the Civil Procedure Rules, the reason is plain enough, a notice to cease acting and to withdraw legal services has been brought to the attention of the respondent. Having been made acutely aware he seems not to be bothered in any other way by filing any objection to the application.

I therefore conclude that on the basis of the reasons given an order to discharge the firm of **Mwaure & Mwaure Waihiga Advocate** from representing the respondent be allowed.

DATED, SIGNED AND DELIVERED AT MALINDI THIS 31<sup>ST</sup> DAY OF DECEMBER 2019

.....

**R. NYAKUNDI**

**JUDGE**

**In the presence of**

1. Ms. Marubu for the applicant