

REPUBLIC OF KENYA

HIGH COURT AT MALINDI

CIVIL SUIT 89 OF 2008

JOHANNA ZOUARI GEISSBULHERPLAINTIFF

VERSUS

VIOLI FEDERIGO

LUIGI FREGUGLIADEFENDANTS

DIRECTIONS

This is a part heard matter. In a ruling I delivered on 28th November, 2012, I directed at paragraph 9, that two application filed on 4th June, 2012 and 18th June, 2012 be heard together *“to pave way for a just determination of the issues therein.”*

The hearing date was set for 11th December, 2012. On that date, Mr. Wambua for the 2nd Defendant requested that parties put in written submissions in regard to the two applications. The court was agreeable and a ruling date was set pending delivery of submissions on 13th December, 2012.

The plaintiff's submissions were filed on 13th December, 2012. The 2nd Defendant's submissions by Mr. Kilonzo were filed on 14th December, 2012.

The latter “submissions” as drafted hardly deal with the material applications. Instead, counsel for the 2nd defendant lunged at the Judge accusing her of all manner of mischief, misconduct and incompetence. Mr. Kilonzo even went on to assert that the judge has *“a predetermined mind and arguing anything before you is a waste of time....that (his) client feels that he cannot get justice before (me)”*.

It would appear that Mr. Kilonzo was aggrieved by the court's directions as given on 28th November, 2012 but rather than advise his client on the proper procedure determined to embarrass the court through a diatribe masqueraded as submissions. Perhaps he had no courage to utter the contemptuous statements to the face of the court hence the request to file written submissions. This conduct is not only unprofessional but it also degrades the high calling of an advocate to represent his client's interest.s it is a pity that Mr. Kilonzo has seeming scant regard for the provisions of Section 1A and 1B of the Civil procedure Act, or indeed the general authority of the court with regard to proceedings before it.

In light of the foregoing, I have come to the conclusion that in addition to seeking the necessary professional intervention regarding the conduct of Mr. Kilonzi, the interest of justice will be better served if this matter is heard before another judge. For this purpose I direct that the same be placed before Hon. Justice Angote on 30th May, 2013 for mention and directions as to the hearing of the applications filed on 4th and 18th June, 2012 as well as the conclusion of the trial.

The Deputy Registrar to issue notices to all parties.

Delivered and signed at Malindi this **10th** day of **May, 2013** in the presence of:

Court clerk - Evans

C. W. Meoli

JUDGE