



REPUBLIC OF KENYA



KENYA LAW
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**Gitau v Waititu (Civil Appeal (Application) 8 of 2017)
[2025] KECA 80 (KLR) (24 January 2025) (Ruling)**

Neutral citation: [2025] KECA 80 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL (APPLICATION) 8 OF 2017
WK KORIR, JA
JANUARY 24, 2025**

BETWEEN

HON WILLIAM KABOGO GITAU APPELLANT

AND

HON FERDINAND NDUNG’U WAITITU RESPONDENT

(Being an application for leave to cease acting by the advocates on record for the appellant under Rule 23(2) of the Court of Appeal Rules, 2022 in Nairobi Civil Appeal No. 8 of 2017)

RULING

1. M/s Issa & Co. Advocates, vide the application dated 25th October 2024, seek leave to cease acting for his client, Hon William Kabogo Gitau, the appellant herein. The applicant’s case is that the law firm received instructions from the appellant to lodge an appeal. Consequently, a memorandum of appeal dated 9th January 2017 and a record of appeal dated 16th January 2017 were filed as against the judgment delivered by the High Court on 7th December 2016 in Petition No. 93 of 2016.

According to counsel, efforts to secure further instructions from the appellant as regards the prosecution of the appeal have borne no fruits. Counsel avers that the continued representation of the appellant in this appeal is, in the circumstances, untenable. Counsel prays that the application be allowed with costs. The application was supported by an affidavit sworn on 25th October 2024 by Mansur M. Issa.

2. The application was not opposed. At the time this application came up for hearing on 4th December 2024, none of the parties had filed submissions.



3. Rule 23(2) of the *Court of Appeal Rules, 2022* under which the application is brought provides as follows:

“An advocate who desires to cease acting for a party in a civil appeal or application, may apply by notice of motion before a single Judge for leave to so cease acting, and such advocate shall be deemed to have ceased to act for such party upon service on the party of a certified copy of the order of the Judge.”

4. An advocate represents the interests of the client. Where an advocate lacks instructions or the efforts to obtain instructions are hampered by the client’s disinterest or indolence in pursuing the case, there is no reason to keep counsel on record. To this end, I associate myself with the holding in *Kenya Tea Development Agency & Theta Tea Factory Company Limited vs. Samuel W’njuguna & 1153 Others* [2021] KECA 643 (KLR) that:

“The Rule is permissive. All that an advocate needs to do under the above rule to earn the Court’s intervention is for such an advocate to express the desire to cease acting which the applicant has expressed herein. The applicant has gone further and annexed correspondences exchanged between his firm and the 1st respondent whose contents clearly indicate existence of a hostile environment not conducive to existence of a harmonious client advocate relationship.”

5. In the instant motion, Mansur Issa has enumerated in the supporting affidavit the numerous times the law firm reached out to the client only to be met with total silence. Having considered the notice of motion and the reasons advanced by counsel for the desire to cease acting for the appellant, I am satisfied that the leave sought should be granted. Consequently, the notice of motion dated 25th October 2024 is hereby allowed with no order as to costs.

6. Any correspondence or other Court processes in this appeal shall henceforth be served directly on the appellant.

DATED AND DELIVERED AT NAIROBI THIS 24TH DAY OF JANUARY, 2025.

W. KORIR

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JUDGE OF APPEAL

I certify that this is a true copy of the original,

Signed

DEPUTY REGISTRAR.

