



**Kamwaro & another v Njoroge (Administrator of the Estate of Michael Njoroge Kimani)  
(Civil Appeal (Application) 262 of 2019) [2025] KECA 91 (KLR) (24 January 2025) (Ruling)**

Neutral citation: [2025] KECA 91 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPEAL (APPLICATION) 262 OF 2019  
M NGUGI, JA  
JANUARY 24, 2025**

**BETWEEN**

**ANGELO KARORI KAMWARO ..... 1<sup>ST</sup> APPELLANT**

**IHERITAGE INSURANCE COMPANY LIMITED ..... 2<sup>ND</sup> APPELLANT**

**AND**

**ESTHER NJERI NJOROGE (ADMINISTRATOR OF THE ESTATE OF  
MICHAEL NJOROGE KIMANI) ..... RESPONDENT**

*(Being an application to cease acting for the appellants)*

**RULING**

1. In its application dated 22<sup>nd</sup> July 2024, the firm of Simba & Simba Advocates seeks leave to cease acting for the appellants in the appeal. The application is brought under section 3A and 3B of the *Appellate Jurisdiction Act* as read with rule 23 (2) of the *Court of Appeal Rules, 2022*
2. The application is based on the grounds set out on its face and is supported by an affidavit sworn by Paul Mause Munywoki on 22<sup>nd</sup> July 2024.
3. Mr. Munywoki avers that the applicant was instructed by the 2<sup>nd</sup> appellant to defend both appellants in the suit in the High Court. Thereafter, the claim against the 2<sup>nd</sup> appellant was withdrawn by consent dated 23<sup>rd</sup> February 2017. The trial court, however, entered judgment in favour of the respondents against both appellants in the judgment dated 26<sup>th</sup> October 2018, leading to the present appeal. However, in a consent dated 19<sup>th</sup> March recorded before the trial court on 28<sup>th</sup> March 2019, the judgment against the 2<sup>nd</sup> appellant was set aside.
4. The applicant further avers that by a letter received by the applicant on 19<sup>th</sup> September, 2019, the 2<sup>nd</sup> appellant, which was the instructing client, informed the firm that it was no longer interested in pursuing the present appeal. Mr. Munywoki avers that the firm therefore wishes to withdraw from



acting for the appellants, and that efforts were made of ensuring that the 1<sup>st</sup> appellant's opportunity of canvassing the appeal is not jeopardized in any manner by the 2<sup>nd</sup> appellant's wish to cease pursuing the appeal.

5. Rule 23(2) of this Court's Rules allows an advocate who desires to cease acting for a party in civil proceedings before the Court to apply before a single judge for leave to cease acting. Essential to obtaining positive orders in an application under rule 23 of this Court's Rules is that the application should have been served on the respondent/client-see *Kenya Tea Agency & Another vs. Samuel W'Njuguna & 115 Others* [2021] eKLR.
6. The applicant has filed an affidavit of service sworn on 9<sup>th</sup> December 2024 by Willis Agayi. This affidavit shows that an attempt was made to serve the present application on the 1<sup>st</sup> applicant on 5<sup>th</sup> December 2024 at his place of business in Maralal town. The affidavit of service indicates that the process server was informed that the 1<sup>st</sup> appellant is deceased, and he has annexed to his affidavit a death certificate indicating that the 1<sup>st</sup> appellant died on 27<sup>th</sup> May 2023. The implication is that the 1<sup>st</sup> appellant's appeal had abated by the time this application was filed in July 2024.
7. Additionally, attached to the affidavit sworn by Mr. Munywoki is the consent dated 28<sup>th</sup> March 2019 in which the parties agreed, inter alia, to set aside the judgment of the trial court against the 2<sup>nd</sup> appellant. Also attached is the letter received by the applicant on 19<sup>th</sup> September 2019 in which the 2<sup>nd</sup> appellant indicated it no longer has an interest in the matter. Given the above matters and circumstances, the application dated 22<sup>nd</sup> July 2024 is allowed.

**DATED AND DELIVERED AT NAIROBI THIS 24<sup>TH</sup> DAY OF JANUARY, 2025**

**MUMBI NGUGI**

**JUDGE OF APPEAL**

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

Signed

**DEPUTY REGISTRAR**

