



REPUBLIC OF KENYA



Lagat v National Oil Corporation of Kenya (Civil Appeal (Application) 35 of 2020) [2024] KECA 1742 (KLR) (6 December 2024) (Ruling)

Neutral citation: [2024] KECA 1742 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL (APPLICATION) 35 OF 2020
M NGUGI, JA
DECEMBER 6, 2024**

BETWEEN

JOHN KIPTOO LAGAT APPELLANT

AND

NATIONAL OIL CORPORATION OF KENYA RESPONDENT

(Being an appeal from the judgment of the Employment and Labour Relations Court (Nzioki wa Makau, J.) in ELRC)

RULING

1. The firm of Kilonzo & Company Advocates has filed the application dated 26th October 2023 seeking leave to cease acting for the respondent in the appeal. The application is brought under section 3A of the *Civil Procedure Act* Cap 21 and Order 9 rule 13 of the *Civil Procedure Rules*. The application is based on the grounds set out on its face and is supported by an affidavit sworn by Lauren N. Magotsi on 26th October 2023.
2. It is averred for the applicant that it has had the conduct of the suit on behalf of the respondent, but the respondent has neglected to furnish it with instructions to enable it continue to represent it, which has made it impossible for the firm to conduct the suit on behalf of the respondent.
3. The proper rule of this Court for lodging of an application to cease from acting for a party in a matter before the Court is rule 23(2) of this *Court's Rules*, 2022. It provides that:

23(2) An advocate who desires to cease acting for any 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. Rule 23(2) provides the procedure to bring an advocate-client relationship; that has hit the rocks to an end. And such relationships do come to an end, often acrimoniously, and must, like marriages, lead to divorce. As was observed by this Court (W. Karanja, JA) in *Njuguna Kabari and Kiai Advocates vs. Nairobi City Council* [2020] eKLR:

“When differences between counsel and client become irreconcilable, just like in a marriage, the relationship becomes untenable and the chains that bind the two parties must be severed.”

5. However, like an estranged spouse, a client must be made aware that his relationship; with his counsel is about to come to an end. In dealing with such a situation in an application under rule 23(2), Nambuye JA (Rtd.) in *Kenya Tea Agency & Another vs. Samuel W’Njuguna & 115 Others* [2021] eKLR expressed herself as follows:

“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 and then cause the desire to cease acting to be brought to the attention of his client.” (Emphasis added).

6. The applicant has expressed his desire to cease acting for his client. He has not, however, communicated this desire to the client, as a perusal of the documents before me discloses no evidence of service upon the respondent.

7. Accordingly, I am unable to grant the orders sought in the application dated 26th October, 2023, and it is hereby dismissed with no order as to costs.

8. The applicant is at liberty to file another application and comply with the requirement for service on the client.

DATED AND DELIVERED AT NAIROBI THIS 6TH DAY OF DECEMBER, 2024.

MUMBI NGUGI

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

