



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mutie v Maitha (Civil Appeal (Application) 66 of 2020)  
[2023] KECA 1206 (KLR) (6 October 2023) (Ruling)**

Neutral citation: [2023] KECA 1206 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPEAL (APPLICATION) 66 OF 2020  
MSA MAKHANDIA, JA  
OCTOBER 6, 2023**

**BETWEEN**

**AGNES NGEKI MUTIE ..... APPLICANT**

**AND**

**JEREMIAH KIILU MAITHA ..... RESPONDENT**

*(An Application by the firm of Kilonzo & Company  
Advocates seeking leave to cease acting for the Appellant)*

**RULING**

1. By a notice of motion dated July 22, 2023 pursuant to rule 23(2) of this *Court's Rules*, section 3A of the *Civil Procedure Act*, M/s Kilonzo & Company Advocates, seek leave to cease acting for the applicant. The motion is anchored on the ground that the respondent has failed to furnish the law firm with instructions to enable it effectively prosecute the appeal. The same reasons are advanced in the affidavit in support of the motion sworn by Lauren N. Magotsi sworn on June 22, 2023.
2. The motion is not opposed by the respondent.
3. The firm has equally filed written submissions dated September 15, 2023 in support of the motion in which it reiterates the reasons aforesaid for its desire to cease acting for the applicant. In further support of its case, reliance is placed on the case of *Njoroge & another v Njoroge & another* KECA 258 (KLR) for the proposition that when dealing with an application by counsel to cease acting for a client, the test should always be that an advocate ought to have expressed the desire to cease acting and then cause the desire to be brought to the attention of his client. In the circumstances of this case, I think that this has been done.
4. Rule 23(2) of this *Court's Rules* requires an advocate who desires to cease acting for any party in a civil appeal or application, to apply by notice of motion before a single judge for leave to cease acting, and



the 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.

5. I am satisfied that the applicant has properly expressed its wish to cease acting for the appellant in accordance with rule 23(2). See *KTDA and another v Samuel Njuguna and 1153 others* [2021] eKLR. There is clear evidence that the intention to cease acting has been communicated to the client. Similarly, this application was served on the respondent and if indeed the respondent wanted the applicant to continue acting for him, he would have said so by way of response. He did not do so. Accordingly, I allow the application with no orders as to costs.

**DATED AND DELIVERED AT NAIROBI THIS 6<sup>TH</sup> DAY OF OCTOBER, 2023.**

**ASIKE-MAKHANDIA**

.....

**JUDGE OF APPEAL**

*I certify that this is a True copy of the original*

*Signed*

**DEPUTY REGISTRAR**

