



**Coast Professional Freighters Ltd v Oganda & another (Civil Appeal 18 of 2016) [2022] KECA 144 (KLR) (18 February 2022) (Ruling)**

Neutral citation: [2022] KECA 144 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT MOMBASA  
CIVIL APPEAL 18 OF 2016  
JW LESSIT, JA  
FEBRUARY 18, 2022**

**BETWEEN**

**COAST PROFESSIONAL FREIGHTERS LTD ..... APPELLANT**

**AND**

**WELSA BANGE OGANDA ..... 1<sup>ST</sup> RESPONDENT**

**ICDC ..... 2<sup>ND</sup> RESPONDENT**

*((Being an application for leave to AMONDI AND COMPANY ADVOCATES to take over the conduct of the matter from AMUGA AND COMPANY ADVOCATES))*

**RULING**

1. This application was heard virtually on the 24<sup>th</sup> November, 2021. Ms. Mathairo held brief for Mr. Amondi for the Applicant while Mr. Amuga appeared for the Respondent. Both counsels for the parties informed the court that due to a technicality, they were not able to file submissions in the matter. The court directed that each party file their submissions within two days of the date the order was made, and both parties complied.
2. The application has been brought by way of a Motion pursuant to Order 9 Rule 9; Order 40 Rules 1, 4 and 10 of the Civil Procedure Rules, Sections 3, 3A and 63(e) of the *Civil Procedure Act*; and 50 (1) of *the Constitution*. The Applicant seeks leave to be granted to AMONDI AND COMPANY ADVOCATES to take over the conduct of the matter from AMUGA AND COMPANY ADVOCATES.
3. Mr. Amuga in his written submissions challenged the application as being defective and/or incompetent for invoking the Civil Procedure Rules which do not apply to this court, and urged that it be dismissed.



4. Mr. Amondi for the Applicant in his written submissions addressed the issue of whether there was need to seek the leave sought in the application before me. He even cited this court's ruling in *Mary Nchekei Paul Vs Francis Mundia Ruga* [2019] eKLR for the proposition that there was no need for the Applicant to apply for leave as he has sought in the application.
5. On the issue of the competence of the application by reason of supporting the application with the provisions of the Civil Procedure Rules, this Court has its own rules of procedure, the Court of Appeal Rules, and the cited provisions of the Civil Procedure Rules are therefore inapplicable. Under Rule 23 of the *Court of Appeal Rules* the issue of change of advocate is addressed as follows:
  - “(1) Where a party to any application or appeal changes his advocate or, having been represented by an advocate, decides to act in person or, having acted in person, engages an advocate, he shall, as soon as practicable, lodge with the Registrar a notice of the change and shall serve a copy of such notice on the other party or on every other party appearing in person or separately represented, as the case may be.
6. 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.”
7. These are the Rules the Applicant ought to have invoked as the bases of his application. The Civil Procedure Rules do not apply to this court. Consequently, the application is incompetent for not invoking the court's jurisdiction. The court cannot entertain an incompetent application and the same is dismissed with costs.

**DATED AND DELIVERED AT MOMBASA THIS 18<sup>TH</sup> DAY OF FEBRUARY 2022**

**JESSIE LESIIT**

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**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**

