



REPUBLIC OF KENYA



**KENYA LAW**  
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**F.A. Badia & Company Advocates v Malambu & 2 others (Civil Appeal  
(Application) 363 of 2017) [2022] KECA 59 (KLR) (4 February 2022) (Ruling)**

Neutral citation: [2022] KECA 59 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPEAL (APPLICATION) 363 OF 2017  
DK MUSINGA, JA  
FEBRUARY 4, 2022**

**BETWEEN**

**F.A. BADIA & COMPANY ADVOCATES ..... APPLICANT**

**AND**

**LUCY KASSIM MALAMBU ..... 1<sup>ST</sup> RESPONDENT**

**CHEGE MUTHEMBA CHEGE ..... 2<sup>ND</sup> RESPONDENT**

**SORAYA WANJIRU MUTHEMBA ..... 3<sup>RD</sup> RESPONDENT**

*(Being an application for leave to cease acting for the appellants/respondents from the Ruling and Decree of the High Court of Kenya at Nairobi (L. A. Achode, J.) dated and delivered at Nairobi on 24th August 2017 in H.C. Succ. Cause No. 1091 of 2009.)*

**RULING**

1. Before me is a notice of motion dated 28th August 2019 brought by the applicant under rule 23(2) of this Court's Rules seeking orders that the applicant's advocates, F.A. Badia and Company, be granted leave to cease from further acting for the appellants/respondents in this appeal and for costs of the application.
2. The application is supported by the grounds set forth on the face of the application together with those laid down in the supporting affidavit sworn on 28th August 2019 by Badia A. Fiona, an advocate practicing under the name and style of the applicant.
3. According to Badia Fiona, the firm received instructions to act on behalf of the respondents on or about 24th October 2007 and it has been in conduct of the matter since then. Further, the firm acted on the respondents' instructions and filed the pending appeal.
4. The applicant seeks to cease from further acting on behalf of the respondents on grounds that in the recent past serious and irreconcilable differences have arisen between the respondents and the firm.



The respondents have also failed to settle their fee note in relation to High Court matter, Succession Cause No. 1091 of 2009, the subject matter of this appeal, thus making it difficult for the applicant to continue representing them. Consequently, the confidence and trust previously enjoyed between the parties has since been eroded, and the advocate-client relationship has completely broken down. It is only fair and equitable that the applicant is granted leave to cease acting on behalf of the respondents, counsel states.

5. By a perusal of the affidavit of service filed by the applicant and sworn on 19th April 2021 by Badia A. Fiona, I am satisfied that the respondents were served with the said application. I am also satisfied that the parties were effectively served with a hearing notice via an email sent to all parties on 2nd June 2021 at 6.12 by the Deputy Registrar of this Court.
6. Although the application was served upon the respondents there has been no response, and in the circumstances the application is therefore unopposed.
7. Directions were given that the application would be disposed of by way of written submissions with no attendance of the parties, either physically or virtually. I have perused the written submissions by the applicant dated 16th April 2021. I am satisfied that given the circumstances as expressed by the applicant, their relationship with the respondents is irretrievably broken down, and the applicant can no longer continue to act for the respondents.
8. Consequently, I allow the applicant's application with costs and grant leave to the firm of F.A. Badia & Company Advocates to cease acting for the respondents in this appeal. Any future correspondence relating to this matter shall be served directly upon the respondents.

**DATED AND DELIVERED AT NAIROBI THIS 4TH DAY OF FEBRUARY, 2022.**

**D. K. MUSINGA, (P)**

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**JUDGE OF APPEAL**

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

*Signed*

**DEPUTY REGISTRAR**

