



Mukira & another v Wakf Commissioner of Kenya & another (Civil Application 61 of 2020) [2022] KECA 1090 (KLR) (7 October 2022) (Ruling)

Neutral citation: [2022] KECA 1090 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT MOMBASA
CIVIL APPLICATION 61 OF 2020**

JW LESSIT, JA

OCTOBER 7, 2022

BETWEEN

FARIDA ALMASI MUKIRA 1ST APPLICANT

SALMA ALMASI MUKIRA 2ND APPLICANT

AND

WAKF COMMISSIONER OF KENYA 1ST RESPONDENT

LYDIA KAGUNA JAPHET 2ND RESPONDENT

(An application to cease acting for leave to the firm of Kanyi J. & Company advocate to cease acting for the 1st and 2nd appellants in the appeal lodged against the judgment of Munyao Sila, J. delivered on 16th July 2020 in ELC 276 OF 2018)

RULING

1. The application before me is undated, but bears an undated stamp of the Court of Appeal. It is supported by an affidavit sworn by Joseph Karanja Kanyi dated 3rd February 2022. The application has been brought pursuant to Rule 1 (2) and Rule 23 (2) of the *Court of Appeal Rules*. It seeks one prayer which is leave for the firm of Kanyi J. & Company Advocates to cease acting for the 1st and 2nd appellants. The ground for the application is that the applicant firm no longer has instructions from the 1st and 2nd appellants to act on their behalf in the appeal before this court.
2. In the supporting affidavit sworn by Mr. Kanyi advocate, he deposed that his firm had been acting for the appellants in the superior court, and upon entry of judgment on 16th July 2020, his firm filed a Notice of Appeal on behalf of the appellants upon instructions. That they did not get any further instructions and consequently they filed an application to cease acting for the appellants before the superior court, which they duly served upon the appellants, and which was heard and allowed on 3rd February 2021.



3. Mr. Kanyi in his affidavit deposed that subsequently his firm received an email from the Deputy Registrar of this court on the 14th October 2021, informing them that their application on behalf of the appellants to deem the Notice of Appeal as duly served and properly on record was coming up for hearing in November 24, 2021. That it was for that reason that the advocates firm found it expedient to file this application to formerly cease acting for the appellants.
4. When the application was called out for virtual hearing before me on the June 13, 2022 Ms. Mango learned counsel was present for the advocate applicant. There was no appearance by the 1st and 2nd appellants despite service of the hearing notice effected on them on the May 16, 2022.
5. Ms. Mango relied on the grounds on the face of the application and the supporting affidavit by Kanyi Advocate.
6. I have considered this application dated February 3, 2022, together with the supporting affidavit of even date. The applicant's advocates firm has expressed its wishes to cease acting for the appellants for reason they have not received any further instructions to continue acting on behalf of the appellants in their appeal before this court. That intention is buttressed first by the filing of this application to cease acting, and secondly by causing this application to be served upon the appellants, the respondents in this application. From the foregoing, the applicant has demonstrated that it no longer has an advocate/client relationship, and that the same has become untenable.
7. In *Kenya Tea Agency & another vs Samuel W'njuguna & 115 others* [2021] eKLR, Nambuye, JA (as she then was) expressed herself thus while considering a similar application:

“The Rule is permissive. All 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 the client.”
8. I have considered that this is the second time that the applicant firm is bringing the application to cease acting for the appellants, the first time being in a similar application before the Superior Court. In both instances the appellants were served with the application and the requisite notice of hearing of the application. In both instances the appellants elected not to contest the application. I am satisfied that the application is well merited.
9. In the result I make orders as follows:
 - i. Prayer 1 of the application dated February 3, 2022 be and is hereby allowed as prayed.
 - ii. The firm of Kanyi J. & Company advocates be and is hereby granted leave to cease acting for the respondents in this application
 - iii. There will be no order as to costs as the application was not defended.

DATED AND DELIVERED AT MOMBASA THIS 7TH DAY OF OCTOBER, 2022.

J. LESIIT

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

