



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: NAMBUYE, J.A - IN CHAMBERS)

CIVIL (APPEAL) APPLICATION NO. 158 OF 2016

BETWEEN

KENYA TEA DEVELOPMENT AGENCY 1ST APPELLANT

THETA TEA FACTORY COMPANY LIMITED 2ND APPELLANT

AND

SAMUEL W'NJUGUNA & 1153 OTHERS RESPONDENTS

(Being an appeal from the Judgment of the High Court of Kenya (Hon. G. V. Odunga, J.)

dated 9th February 2015 in Milimani Civil Case No. 1192 of 2003 Consolidated with No. 26 of 2004)

RULING OF THE COURT

Before me is a Notice of Motion dated 25th June, 2020 under **Rules 23(2) and 42** of the **Court of Appeal Rules, 2010** and **section 3A** of the **Appellate Jurisdiction Act** and all other enabling provisions of the law seeking orders as follows:

- 1) That Mugambi imanyara & Company Advocates be granted leave to cease further acting for the respondents herein.**
- 2) That costs be provided for.**

It is supported by grounds on its body and a supporting affidavit of **Mugambi Imanyara**. It has not been opposed either by a replying affidavit following service upon the respondent of the application by the applicant's advocates through WhatsApp using his known mobile number nor written submissions in response to the Deputy Registrar's hearing notice served onto the advocates for the respective parties herein of Fri. Apr. 9, 2021 at 12.1pm.

The application was canvassed virtually through the sole pleadings and written submissions of the applicant without oral highlighting. It is the applicant's averments and submission that there are irreconcilable issues that arose between the applicant and the respondent as their client. This is what prompted the respondent to write a handwritten letter under the hand of **Samuel W'Njuguna**, the 1st respondent dated 9th March, 2020 addressed to the applicant.

The gist of the letter was that the applicant has never been instructed to act for the respondents in this matter and requested the applicants to hand over all the files, documents and any other relevant information regarding the matters herein. The applicant responded to the said communication on the same date of 9th March, 2020 that they have noted the sentiments expressed by the 1st respondent in his letter. Their reaction to those contents was that they would file a bill of costs to recover their costs and would also arrange to hand over the client file as requested.

It is on the totality of the above position that they applicants contend that they cannot continue acting for the respondents in this matter hence the application under consideration for them to cease acting.

To buttress the above submissions, the applicant relies on the ruling in the case of **Njuguna, Kahari and Kiai Advocates in Nairobi City Council [2020] eKLR**.

My invitation to intervene on behalf of the applicant has been invoked under the provisions of law cited above. **Rule 42** is merely procedural and need no further interrogation. The substantive **Rule** is **Rule 23(2)** of the Court's **Rules**. It provides:

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.

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 which the applicant has expressed herein. The applicant has gone further and annexed correspondences exchanged between his firm and the 1st respondent whose contents clearly indicate existence of a hostile environment not conducive to existence of a harmonious client advocate relationship.

It is even averred and submitted that the 1st respondent declined service upon him of the application under consideration on his own behalf and that of the rest of the respondents necessitating the applicant to effect service of the application under consideration through WhatsApp and to which no response has been filed.

In the result:

1) I find the reasons given for the applicants desire to cease from acting for the respondents were well founded. The application dated 25th Jun, 2020 be and is hereby allowed.

2) Each party to bear own costs.

DATED and DELIVERED at NAIROBI this 23rd day of April, 2021.

R. N. NAMBUYE

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR