



IN THE COURT OF APPEAL

AT MOMBASA

(CORAM: DR. K. I. LAIBUTA, J.A. (IN CHAMBERS))

CIVIL APPEAL (APPLICATION) NO. 133 OF 2018

BETWEEN

GLADYS RIZIKI NYAMAWI.....1st APPELLANT
JOHNSON NZAI.....2nd APPELLANT
BENSON MANDU.....3rd APPELLANT
WILLIAM CHARO.....4th APPELLANT
FLORENCE NZINGO.....5th APPELLANT
GEORGE WANJE.....6th APPELLANT
MOHAMED MWACHARO.....7th APPELLANT
MARGARET LUVUNO.....8th APPELLANT
KANZE SAFARI..... 9th APPELLANT

AND

REGISTRAR OF TITLES, MOMBASA 1stRESPONDENT
PERCY DALRYMPLE TOWNSEND..... 2ndRESPONDENT
ROBERT LUNAN..... 3RDRESPONDENT
GWENDOLYN AGNES BRANDY..... 4THRESPONDENT
GEORGE TAYLOR..... 5thRESPONDENT
JOSEPH LEWART TORR..... 6th RESPONDENT
AGRICULTURE HANDLING SERVICES LTD..... 7thRESPONDENT
MTWAPA HOLDINGS LIMITED..... 8thRESPONDENT
WEISBADEN DREAM VILLAS LIMITED..... 9thRESPONDENT

LAWIS MUCHAI10thRESPONDENT

JUMA CHENGO KASHAHA

(Administrator of the Estate of ChengoKashaha Mangi) (both deceased – substituted by)

OMAR SALIM CHENGO..... 11thRESPONDENT

(Being an application to grant leave to cease from acting for the Appellants in Mombasa Civil Appeal No 133 of 2018)

RULING

By a Notice of Motion dated 2nd October 2019 and made under Order 9 Rule 13 and Order 51 Rule 1 of the Civil Procedure Rules, counsel for the Appellants, M/s.

Steve Kithi & Company Advocates, seek leave to cease from acting for the Appellants. Their application is supported by the affidavit of Stephens Kithi Ngombo sworn on 2nd October 2019 and is made on grounds set out on the face of the Motion.

I have read Mr. Kithi’s supporting affidavit and appreciate its contents. It is not clear on what grounds Order 9 Rule 13 and Order 51 Rule 1 of the Civil Procedure Rules are invoked. The same apply to proceedings in superior courts and are of no relevance to these proceedings. I need not take issue with this procedural technicality, which I am inclined to overlook on account of the provisions of **Article 159(2) (d)** of the Constitution under which I am mandated to exercise my judicial authority without undue regard to procedural technicalities.

The relevant provision is **Rule 23(2)** of the Court of Appeal Rules, which 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 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.

Accordingly, I hereby order and direct that –

(a) counsel for the Appellants be deemed as having ceased to act for the Appellants on service upon all the Appellants of this order;

(b) there be no orders as to costs.

Dated and Delivered at Nairobi this 23rd day of July, 2021.

DR. K. I. LAIBUTA

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR