



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: MURGOR, J.A. (IN CHAMBERS))

CIVIL APPEAL NO. 87 OF 2016

BETWEEN

BARNES MUEMA .....APPLICANT

AND

FRANCIS MASUNI KYANGANGU.....RESPONDENT

*(An appeal from the judgment of the High Court of Kenya at Nairobi (J. Ngugi, J.) dated 27<sup>th</sup> February 2012*

in

*Machakos Civ App No. 115 of 2003)*

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RULING

This Notice of Motion dated 18<sup>th</sup> June 2019 expressed to have been made under **rule 23 (2)** of the Court of Appeal Rules seeks orders, for;

***“That Messrs Kilonzo & Company Advocates who are on record for the Applicant be granted leave to cease acting for the Applicant herein.”***

The application is premised on the grounds that the appeal came up for case management on 6<sup>th</sup> April 2017 when parties were directed to file and serve their respective submissions within 30 days; that despite request made by its advocates, no response has been forthcoming from the applicant; that counsel for the applicant received another notice of hearing dated 27<sup>th</sup> May 2019 and once again, their request for instructions has not been met with any response so as to enable them proceed with prosecuting the appeal. As a consequence, counsel has requested for leave to cease acting on the applicant’s behalf.

The motion was supported by an affidavit sworn on 18<sup>th</sup> June 2019 by Kieti D. Ndolo, Advocate which reiterated the grounds set out above.

I have considered the application and the grounds canvassed therein. It is apparent that the firm of **Messrs Kilonzo & Company Advocates** is facing difficulties obtaining instructions from the applicant, which is the reason for their request to cease acting for the applicant. However, should I allow the application, there is the even greater risk of this Court being faced with the challenge of having to trace the applicant herein without due assistance from the firm of **Messrs Kilonzo & Company Advocates**, the current advocates.

Given the circumstances of the application, I decline to grant the orders sought, and would instead, make the following orders;

- i) That the appeal be listed for hearing on a priority basis, when counsel for the applicant should appear together with the applicant, **Barnes Muema** who should take over the conduct of his appeal on that date.
- ii) That on the same hearing date, counsel be at liberty to again lodge its application to cease acting.
- iii) That costs thereof shall abide the outcome of the appeal.

***Dated and delivered at Nairobi this 23<sup>rd</sup> day of October, 2020***

**A.K. MURGOR**

.....

**JUDGE OF APPEAL**

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

*Signed*

**DEPUTY REGISTRAR**