



**IN THE COURT OF APPEAL**

**AT NAIROBI**

**(CORAM: GITHINJI, JA (IN CHAMBERS))**

**CIVIL APPLICATION NO. NAI 206 OF 2017 (UR 162/2017)**

**BETWEEN**

**CAPITAL MARKET AUTHORITY.....APPLICANT**

**VERSUS**

**INSTITUTE OF CERTIFIED PUBLIC**

**ACCOUNTANTS OF KENYA.....1ST RESPONDENT**

**SOBAKCHAND SHAH.....2<sup>ND</sup> RESPONDENT**

**ANNE MURAYA.....3<sup>RD</sup> RESPONDENT**

**HARVEEN GADHOKE, DOREEN MBOGO,**

**ANNE MURAYA & WAMAE KIARIE**

**T/A DELOITTE & TOUCHE.....4<sup>TH</sup> RESPONDENT**

*(An Application for extension of time to file and serve the notice of appeal out of time against the Judgment and decree of the High Court of Kenya at Nairobi (Sergon, J.) delivered on 28<sup>th</sup> June, 2017*

*in*

*H.C.C.C. NO. 1 OF 2015)*

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**ORDER**

[1] By a notice of motion dated 28<sup>th</sup> August 2017 the applicant Capital Markets Authority (CMA) seeks extension of time within which to file and serve a notice of appeal against the judgment and consequential decree of the High Court delivered on 28<sup>th</sup> June 2017 in Civil Appeal No. 1 of 2015.

[2] By that judgment, the High Court upheld a preliminary objection to the appeal lodged by CMA against the decision of the Disciplinary Committee of the Institute of Certified Public Accountants of Kenya, the 1<sup>st</sup> respondent herein, and held that CMA has no right of appeal against the decision. Consequently, the High Court struck out the appeal with costs. The applicant intends to appeal against that decision.

[3] The applicant is represented by the firm of **Muriu Mungai & Co. Advocates** who filed written submissions on 31<sup>st</sup> August 2017. When the application came for hearing before me on 7<sup>th</sup> May 2018, the applicant’s advocate was absent although served with a hearing notice on 4<sup>th</sup> May, 2018.

The respective counsel for the respondent applied for an order that the application be dismissed for non attendance under Rule 56(1) of the Court of Appeal Rules. I declined to dismiss the application for the reason that the applicant's advocates have filed written submissions which are allowed by Court's Practice and Directions and directed that the application be heard on the merits. Thereupon, the respective counsel made submissions and the ruling was reserved for 11<sup>th</sup> May, 2018.

[4] However, upon perusal of the proceedings, I have discovered that the application is solely supported by the affidavit of **Munge Murage**, an advocate in the firm of **Muriu Mungai & Co. Advocates**. I have also discovered that the application came for hearing before **Sichale, JA** on 24<sup>th</sup> October 2017 when **Mr. Musyoka** holding brief for Mr. Munge Murage intimated that the firm of Muriu Mungai & Co. Advocates has ceased from acting for the applicant upon being appointed by the 1<sup>st</sup> respondent herein as their advocates and the application was adjourned for that reason. However, no formal application for leave to cease acting was filed.

[5] In the absence of such an application, the applicant may not be aware of the new development. In the circumstance, it would be unjust to determine the application when in reality the applicant's advocates are not representing the interest of the applicant, and when the applicant has not been given an opportunity to appoint another advocate or to be heard in the application more so, when the proceedings in the High Court show that the applicant, a regulating authority has great interest in the underlying dispute.

[6] In the premises, I remand the ruling and direct that the application be heard *de novo* by another Judge and that the hearing notice for the next hearing be served on the applicant personally and in good time. The Registrar is further directed to serve a copy of this order on the applicant.

**DATED and delivered at Nairobi this 11<sup>th</sup> day of May, 2018.**

**E. M. GITHINJI**

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**JUDGE OF APPEAL**

*I certify that this is a*

*true copy of the original*

**DEPUTY REGISTRAR**