



REPUBLIC OF KENYA



Otwori v Merkle (Cause 2385 of 2017) [2024] KEELRC 386 (KLR) (29 February 2024) (Ruling)

Neutral citation: [2024] KEELRC 386 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 2385 OF 2017
L NDOLO, J
FEBRUARY 29, 2024**

BETWEEN

FLORENCE OTWORI CLAIMANT

AND

CASPAR MERKLE RESPONDENT

RULING

1. What is before me is a Chamber Summons dated 18th July 2023, by which the firm of Nyaguthie Njuguna & Company Advocates seeks leave of the Court to cease acting for the Respondent.
2. The application is supported by an affidavit sworn by Paula Njuguna, Advocate and is based on the following grounds:
 - a. That the Respondent is a foreigner;
 - b. That the Respondent is the holder of a diplomatic passport and enjoys immunity from legal process under the *Privileges and Immunities Act*;
 - c. That the Respondent has failed and neglected to furnish his Advocates with instructions to continue representing him in the matter;
 - d. That Counsel has made telephone calls to the Respondent which have not been answered;
 - e. That Counsel has sent several emails to the Respondent which have bounced back;
 - f. That a representative of the law firm has visited the Respondent's workplace where he was informed that the Respondent has not been at the workplace for a while.
3. The Claimant opposes the application by her replying affidavit sworn on 28th July 2023.
4. The Claimant depones that the application is made in bad faith with the sole aim of frustrating the expeditious disposal of her claim which was commenced in 2017.



5. She states that the Applicant has not demonstrated any efforts made to trace the Respondent for purposes of seeking further instructions. She points out that the Applicant has not attached call logs, messages or email non-delivery extracts to support the assertion that there were attempts made to reach the Respondent.
6. The Claimant concedes that a court cannot compel an Advocate to continue acting for a party without proper instructions but adds that the lack of instructions must be demonstrated by way of credible evidence.
7. Paula Njuguna, Advocate swore a further affidavit on 6th February 2024, reiterating the averments in her affidavit in support of the application.
8. Counsel depones that her application is made in good faith and adds that there is no requirement for documentary evidence to support her assertion that she no longer has instructions to proceed with the matter.
9. This is a single issue application brought under Order 9 Rule 13(1) of the Civil Procedure Rules which provides as follows:
 1. Where an Advocate who has acted for a party in a cause or matter has ceased so to act and the party has not given notice of change in accordance with this order, the advocate may on notice to be served on the party personally or by prepared post letter addressed to his last known place of address, unless the court otherwise directs, apply to the court by summons in chambers for an order to the effect that the advocate has ceased to be the advocate acting for the party in the cause or matter, and the court may make an order accordingly.
10. In her written submissions dated 7th February 2024, the Applicant cites the decision in Njoroge & another v Njoroge & another (Civil Application E106 of 2021) [2021] KECA 258 (KLR) (3 December 2021) (Ruling) where the Court of Appeal cited its earlier decision in Kenya Tea Agency & another v Samuel W. Njuguna & 115 others [2021] eKLR where it was held that:

“The Rule [Order 9 Rule 13(1)] 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 and then cause the desire to cease acting to be brought to the attention of the client.”
11. There is no doubt that this claim has remained in the court system for a long time and further delay will be occasioned by Counsel on record for the Respondent ceasing to act. However, this is not a valid reason for the Court to force Counsel who says she no longer has instructions to remain on record.
12. In the circumstances, the only thing to do is to allow the application and thereby grant leave to the firm of Nyaguthie Njuguna & Company Advocates to cease acting for the Respondent.
13. The Claimant will deal directly with the Respondent henceforth.
14. The costs of the application will be in the cause.
15. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 29TH DAY OF FEBRUARY 2024

LINNET NDOLO

JUDGE



Appearance:

Ms. Nyaguthie for the Applicant

Mr. Agwata for the Claimant

