



REPUBLIC OF KENYA



In re Estate of the Late Dedan Kariuki Kamau (Deceased) (Succession Cause 145 of 1999) [2025] KEHC 666 (KLR) (31 January 2025) (Ruling)

Neutral citation: [2025] KEHC 666 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 145 OF 1999
SM MOHOCHI, J
JANUARY 31, 2025**

IN THE MATTER OF THE ESTATE OF THE LATE DEDAN KARIUKI KAMAU (DECEASED)

BETWEEN

PETER MUTURI KARIUKI 1ST PETITIONER

LEAH NJERI KARIUKI 2ND PETITIONER

AND

MINE WANJIKU KARIUKI 1ST OBJECTOR

GRACE WATERE KARIUKI 2ND OBJECTOR

RUTH WAIRIMU KARIUKI 3RD OBJECTOR

MARY WARINGA KARIUKI 4TH OBJECTOR

ANNE WANJIRU KARIUKI 5TH OBJECTOR

AND

GITHUI & COMPANY ADVOCATES APPLICANT

RULING

1. Before me for determination is the Notice of Motion Application dated 14th March, 2024 anchored on Order 9 Rule 13 of the Civil Procedure Rules. The Applicant is seeking the following orders:-
 - a. That the firm of Githui & Co Advocates be granted leave to cease acting for the 1st and 2nd Petitioners
 - b. That costs of the application be borne by the Respondent.



2. The Application is based on the grounds set out therein and also supported by the annexed Affidavit of Githui John, Advocate, sworn on even date. According to counsel, the lack of instructions and communications breakdown necessitated the need for the instant Application.
3. He deponed further that the advocate client relationship has broken down and without instructions, it is impossible to continue representing the 1st and 2nd Petitioners.
4. The Court directed that the Application be disposed by way of written submissions. On 24th September, 2024 the Applicant indicated that they had filed and served submissions. There are no submissions on record nor on the CTS platform.

Analysis and Determination

5. Having considered the reasons advanced by counsel in his Application. When an Advocate wishes to withdraw from acting for a client, the applicable law is provided for under Order 9 Rule 13(1) of the Civil Procedure Rules which provides that:-

“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:

Provided that, unless and until the advocate has –

- a. Served on every party to the cause or matter (not being a party in default as to entry of appearance) or served on such parties as the Court may direct a copy of the said order; and
 - b. Procured the order to be entered in the appropriate Court; and
 - c. Left at the said Court certificate signed by him that the order has been duly served as aforesaid, he shall (subject to this order) be considered the advocate of the party to the final conclusion of the cause or matter including any review or appeal.”
6. Looking at the case of James Kanyiita Nderitu & Hellen Njeri Nderitu v Marios Philotas Ghikas & Mohammed Swaleh Athman [2016] KECA 470 (KLR) the Court of Appeal cited the Supreme Court of India in the case of Sagram Singh -vs- Election Tribunal, Kotah, AIR 1955 SC 664, at 711 where it sated as follows:-

“There must be ever present to the mind the fact that our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them.”

7. The Applicant seeks leave to cease from acting on account of want of instructions and breakdown of communication. Order 9 Rule 13 of the Civil Procedure Rules places the requirement that for an Advocate to cease acting he has to give notice to all affected parties and serve the notice in person, in this case to the 1st and 2nd Petitioners, or to their last known address.



8. The record shows that neither the 1st or 2nd Petitioners were served in person since there is no evidence of return of service in the Court file or in electronic form or that they were aware of the notice and chose not to respond.
9. When an advocate client relationship breaks down the relationship in turn becomes untenable and there is very little that the Court can do other than allow them to part ways. But then again, justice may be compromised once a litigant who was enjoying the services of an advocate is left alone without notice. Allowing this application will be condemning the Respondents unheard and flouting rules of procedure.
10. In the circumstances of this case, I am not satisfied that the leave sought for the Applicant to pull out from these proceedings should be allowed for the reason that the Applicant has not demonstrated that requirements of Order 9 Rule 13 of the Civil Procedure Rules as to withdrawal of an Advocate have been met.
11. The Notice of Motion dated 14th March, 2024 is hereby dismissed with no orders as to costs.

It is so ordered

DATED, SIGNED AND DELIVERED AT NAKURU ON THIS 31ST DAY OF JANUARY 2025

MOHOCHI S. M.

JUDGE

