

**REPUBLIC OF KENYA**

**IN THE SUPREME COURT OF KENYA AT NAIROBI**

*(Coram: Maraga, CJ & P; Ibrahim, Ojwang, Wanjala & Njoki, SCJJ)*

**PETITION (APPLICATION) NO. 13 OF 2019**

**— BETWEEN —**

**STEPHEN MAINA GITHIGA.....**  
**ESTON GAKUNGU GIKOREH.....**  
**PETER KINYUA.....**  
**FRANCIS MACHARIA MARK.....**  
**LERIONKA TIAMPATI.....**  
**JOHN F. KENNEDY OMANGA.....**

**APPELLANTS**

**— AND —**

**KIRU TEA FACTORY COMPANY LTD..... RESPONDENT**

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*(Being an application to strike out Notice of Appeal, Petition, and Notice of Appointment of Advocates)*

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**RULING OF THE COURT**

**[1]** Coming up before this Court are two Notice of Motion applications filed by the firm of Kithinji Marete & Company advocates, dated 3 May 2019 and filed on 6 May 2019. The first application is seeking the following Orders:

- (i) *that the notice of appointment of Advocates dated 4 April 2019, and filed on even date by M/s. Ochieng, Onyango, Kibet & Ohaga Advocates [M/s. Triple OK Law] be struck out with costs;*
- (ii) *that the notice of change of Advocates dated 15 April 2019, and filed on 17 April 2019 by M/s. Ochieng, Onyango, Kibet&Ohaga Advocates, be struck out with costs;*
- (iii) *that all pleadings filed by M/s. Ochieng, Onyango, Kibet & Ohaga Advocates, on behalf of Kiru Tea Factory Company Limited in relation to this matter, be struck out with costs;*
- (iv) *that the costs of, and incidental to this application be provided for.*

**[2]** In the second application, the respondent is praying for the following orders:

- (i) *that the notice of appeal dated 29 March 2019, and filed on 1 April 2019, be struck out with costs;*
- (ii) *that Supreme Court Petition No. 13 of 2019 – **Stephen Maina Githiga & Others v. Kiru Tea Factory Company Limited** – as instituted by the Petition of 3 April 2019 be struck out with costs; and*
- (iii) *that the costs of, and incidental to this application be provided for.*

**[3]** Petition No. 13 of 2019 (**Stephen Maina Githiga & Others v. Kiru Tea Factory Company Limited**) is an appeal against the decision of the Court of Appeal delivered on 28 March 2019, an application for review of that Court’s Ruling of 22 February 2019, which had found the appellants in contempt of its Orders. The appellants argue, *inter alia*, that the Appellate Court committed grave injustice, and a breach of vital principles falling under Articles 27(1), 50(1) and 159(2)(a) & (e) of the

Constitution. These applications were filed just after the filing of the petition. The background to these two applications has been clearly set out in our Ruling in Supreme Court Application No. 12 of 2019 (***Stephen Maina Githiga & Others v. Kiru Tea Factory Company Limited***), and there is no need to restate the pertinent facts here.

- [4] The 1<sup>st</sup> – 4<sup>th</sup> appellants have filed affidavits, all dated 13 May 2019, asserting that the firm of M/s Triple OK Law was appointed by Kiru Tea Factory Company, the respondent herein, to represent it. The same affidavits and submissions proffered in the present applications were also presented in Application No. 12 of 2019 (***Stephen Maina Githiga and 5 Others v. Kiru Tea Factory Company Limited***), in respect of which we have ruled that the firm of Kithinji Marete & Company Advocates is properly on record. Our decision was informed by an existing Order of the Court of Appeal, dated 6 December 2017.
- [5] Having ruled that the firm of Kithinji Marete & Company Advocates is properly on record for Kiru Tea Factory Company Limited, we do not hesitate to strike out the Notice of Appointment lodged by Triple OK Law, as well as its Notice of Change of Advocates, and all pleadings which that firm has filed on behalf of the Company — as sought in the first application.
- [6] We now turn to the second application by the respondents, which is supported by the affidavit of Mr. Geoffrey Chege Kirundi, dated 3 May 2019. He is urging the Court to strike out the Notice of Appeal, as well as the petition by the appellants, which is filed by the firm of M/s. Millimo Muthomi & Company Advocates. He avers, *inter alia*, that the appeal seeks to overturn the Court of Appeal decision of 28 March 2019; and that

the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> appellants had withdrawn their application for review of the Appellate Court decision which held them to be in contempt of Orders issued on 6<sup>th</sup> December 2017. It is Mr. Kirundi's averment that the said appellants were no longer parties to the cause, and so they cannot rightly pursue the appeal matter, and their Notice of Appeal will only pervert the cause of justice, and amount to abuse of the process of the Court.

[7] The appellants have not responded to the second application. Following our earlier Ruling on representation, we allow scope for a reply within 21 days of the date hereof: in which event the question shall be placed before the Court for expeditious hearing and disposal.

[8] Accordingly, we now make the following Orders:

- (a) ***The Notice of Appointment of Advocates dated 4 April 2019, and filed on even date by M/s. Ochieng', Onyango, Kibet & Ohaga Advocates, is hereby struck out.***
- (b) ***The notice of change of advocates dated 15 April 2019, and filed on 17 April 2019 by M/s. Ochieng', Onyango, Kibet & Ohaga Advocates is hereby struck out.***
- (c) ***All pleadings filed by M/s. Ochieng', Onyango, Kibet & Ohaga Advocates on behalf of Kiru Tea Factory Company Limited, in relation to this matter, are hereby struck out.***
- (d) ***The appellants shall, within 21 days of the date of this Ruling, file a response to the second Notice of Motion, dated 3 May 2019.***
- (e) ***The determination of the application to strike out the Notice of Appeal dated 29 March 2019, and filed 1 April***

*2019, and Supreme Court Petition No. 13 of 2019 (i.e., the second application), shall await further directions of this Court.*

**(f) *Costs shall be in the cause.***

**DATED and DELIVERED at NAIROBI this 29<sup>th</sup> day of *November* 2019.**

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**D.K. MARAGA  
CHIEF JUSTICE AND THE PRESIDENT OF THE SUPREME COURT**

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**M. K. IBRAHIM  
JUSTICE OF THE SUPREME COURT**

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**J. B. OJWANG  
JUSTICE OF THE SUPREME COURT**

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**S.C. WANJALA  
JUSTICE OF THE SUPREME COURT**

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**NJOKI NDUNGU  
JUSTICE OF THE SUPREME COURT**

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

**REGISTRAR,  
SUPREME COURT OF KENYA**