



**Imbani Dispensary v Abdi (Environment & Land Miscellaneous Case  
195 of 2019) [2025] KEELC 3335 (KLR) (24 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3335 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND MISCELLANEOUS CASE 195 OF 2019**

**CG MBOGO, J**

**APRIL 24, 2025**

**BETWEEN**

**IMBANI DISPENSARY ..... APPLICANT**

**AND**

**ABDURAHAMAN MOHAMED ABDI ..... RESPONDENT**

**RULING**

1. Before me is the notice of motion dated 23<sup>rd</sup> January 2025, filed by the applicant, and it is expressed to be brought under Sections 1A, 1B and 3A of the Civil Procedure Act, and Order 9 Rule 9 of the Civil Procedure Rules seeking the following orders:-
  1. Spent.
  2. That the firms of advocates to wit; a) M/S P.G Kaingu & Co. Advocates, Homeplus Apartments, Gichugu Road, P.O. Box 5634-00100 Nairobi and b) M/S Wanjiru Thungu & Co. Advocates, Cargen House, 3<sup>rd</sup> Floor, Room 311, Harambee Avenue P.O. Box 4950-00200 Nairobi be granted leave to come on record for the applicant/ claimant after judgment in place of M/S Mbuthia Kinyanjui & Co. Advocates, Hazina Towers, 14<sup>th</sup> Floor, University way, Monrovia street P.O. Box 1046-00101, Nairobi.
  3. That this honourable court do make any such further orders and issue any other relief it may deem just to grant in the circumstances.
  4. That costs of this application be provided for.
2. The application is premised on the grounds on its face. The application is further supported by the affidavit of Julius Musyoka Kilonzo sworn on even date. In his affidavit Mr. Kilonzo deposed that he is the founding chairman of the applicant, and that has the authority to swear on behalf of the society. He deposed that this court converted the award of the National Land Commission into a judgment



that was delivered on 17<sup>th</sup> October, 2021, and that since then, the applicant has not realized the fruits of the award by the National Land Commission.

3. He deposed that it is now 3 years since the award, and that the advocate on record has not given an explanation as to why they are unable to execute the award. Further, that the advocate has lost interest in the matter, and that as members of the applicant, they have also lost faith in the advocate, as such, they do not wish to be represented by the law firm of Mbuthia Kinyanjui & Co. Advocates.
4. The application was opposed by Samson Mbuthia Kinyanjui, the learned counsel who has had conduct of the matter through his affidavit sworn on 13<sup>th</sup> March, 2025. The learned counsel deposed that it is clear that no meeting was held by the organization to sanction disengagement of their services to the applicant, and that the chairman of his own motion and frolic cannot purport to act without the instructions of the members or at the very list that of the leadership.
5. The learned counsel further deposed that this is not the first time the law firm that seek to come on record have made attempts to represent the applicant, and pursuant to the ruling delivered on 29<sup>th</sup> July, 2024, the orders are yet to be complied with before the two advocates are heard on this frivolous and vexatious application. That contrary to the allegations, they have obtained a decree and a certificate of costs dated 28<sup>th</sup> March, 2023, and that the delay in executing the said decree has not been occasioned by themselves, but the intermeddling of the proceedings by the two law firms.
6. The learned counsel deposed that the two law firms have nothing but greed, and want to reap where they never sowed and that if they are properly instructed, he will be requesting for his costs based on the party to party bill of costs and the usual 50% costs for the advocate-client bill of costs. Further, that any attempt to replace the advocate on record would be prejudicial not only to the members of the applicant, but to the advocate who has had conduct of this matter for the past 10 years.
7. Mr. Julius Musyoka Kilonzo filed a supplementary affidavit in response thereto sworn on 20<sup>th</sup> March, 2025. Mr. Kilonzo reiterated the averments contained in his supporting affidavit, and further deposed that no advocate-client bill of costs has been filed so far by the firm of Mbuthia Kinyanjui & Co. Advocates, and that once the law firm files his bill of costs, he will be paid for the work done. He averred that he has no faith in the representation by Mr. Mbuthia Kinyanjui, and prays that the court allows him to change the advocate. He maintained that nothing stops the said law firm from filing its advocate-client bill of costs which certificate of taxation he will honour.
8. The application was canvassed by way of written submissions. The applicant filed his written submissions dated 20<sup>th</sup> March, 2025. The applicant submitted that the three law firms: Mbuthia Kinyanjui & Co. Advocates, P. G Kaingu & Co. Advocates, and Wanjiru Thungu & Co. Advocates were all involved in the hearing of the application, and since the law firm of Mbuthia Kinyanjui & Co. Advocates was spearheading the process, the two other law firms did not do anything as they all waited for the lead law firm to start the process of execution.
9. In conclusion, the applicant submitted that he has made up his mind that he no longer has faith in the advocate on record who for more than 3 years, has failed to execute the judgment on record. Further, that his decision to appoint other law firms to safeguard his interest is within his discretion albeit with the leave of this court.
10. The law firm of Mbuthia Kinyanjui & Co. Advocates filed its written submissions dated 11<sup>th</sup> April, 2025, where it raised one issue for determination which is whether the law firm of P.G Kaingu & Co. Advocates and Wanjiru Thungu & Co. Advocates should be granted leave to come on record for the applicant/claimant after judgment in place of M/S Mbuthia Kinyanjui & Co. Advocates.



11. On this issue, the learned counsel submitted that the law firm of Mbuthia Kinyanjui & Co. Advocates has been properly on record for the applicant in all forums and continues to be on record for the same client. The learned counsel reiterated the averments raised in his replying affidavit, and relied on the cases of *S. K Tarwadi vs Veronica Muehlmann* [2019] eKLR and *Lalji Bhimji Shangani Builders & Contractors v City Council of Nairobi* [2012] eKLR.
12. I have considered the application, the replies thereof and the written submissions filed by the rival parties. The issue for determination is whether this court ought to allow the law firms of P.G Kaingu & Co. Advocates and Wanjiru Thungu & Co. Advocates ought to come on record for the applicant after judgment has been delivered.
13. Order 9, Rule 9 of the Civil Procedure Rules provides as follows;

“When there is a change of advocate, or when a party decides to act in person having previously engaged an advocate, after judgment has been passed, such change or intention to act in person shall not be effected without an order of the Court—

  - (a) upon an application with notice to all the parties; or
  - (b) upon a consent filed between the outgoing advocate and the proposed incoming advocate or party intending to act in person as the case may be.”
14. The above cited provision of the law gives the procedure to be followed once there is change in legal representation after judgment has been entered. Among the reasons for this requirement is for orderliness and to ensure that any party does not steal a march against the advocate who has been on record, before the judgment was delivered. In this case, the applicant contended that the firm of Mbuthia Kinyanjui & Co. Advocates who have been on record in this matter, has failed to execute judgment for more than three years since it was delivered, and as a result they have lost faith in the said law firm and no longer require their legal services.
15. On the other hand, the firm of Mbuthia Kinyanjui & Co. Advocates contends that it has been on record for the applicant for more than 10 years, and that there being no meeting held by the members of the applicant to disengage his services, the applicant cannot purport to act without the instructions of the members. In addition, it was argued that the law firm obtained a decree and a certificate for costs but their efforts have been hampered by the interference of the other two law firms.
16. Ideally the relation between an advocate and a client is a contractual relationship whose terms of engagement are not possibly known to other parties including the court unless such terms are disclosed. In this relationship, the applicant seems to be frustrated by law firm’s delay in executing the decree. On the other hand, the law firm is not ready to let go of the relationship and in fact, states that it is owed large sums of money in legal fees. The applicant states that it has made up its mind, and would settle the fees due once the same has been filed.
17. Looking at the circumstances of the case, this court cannot be entangled in the seemingly sour relationship that exists between the applicant and the law firm. In any event, there is a process stipulated in law to be followed where a law firm seeks to recover sums owing for the legal services rendered.
18. The applicant has a choice to legal representation, and this court cannot interfere with such a decision unless it has been proven otherwise. I do not see any prejudice that the law firm of Mbuthia Kinyanjui & Co. Advocates will suffer if the application is allowed.



19. For this reason, I find merit in the notice of motion dated 23<sup>rd</sup> January, 2025. The firms of M/S P.G Kaingu & Co. Advocates, and M/S Wanjiru Thungu & Co. Advocates, are hereby granted leave to come on record for the applicant in place of M/S Mbuthia Kinyanjui & Co. Advocates. Each party to bear its own costs.

Orders accordingly.

**DATED, SIGNED & DELIVERED VIRTUALLY THIS 24<sup>th</sup> DAY OF APRIL, 2025.**

**HON. MBOGO C.G.**

**JUDGE**

24/04/2025.

In the presence of:

Mr. Benson Agunga - Court assistant

Mr. Kinyanjui for the Respondent - present

Mr. Kaingu for the Applicant – present

Ms. Thiong'o appearing jointly with Mr. Kaingu for the Applicant – present

