



**Ngugi v Kamau & 123 others (Environment & Land Case  
E083 of 2021) [2025] KEELC 3372 (KLR) (24 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3372 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT & LAND CASE E083 OF 2021**

**JM ONYANGO, J**

**APRIL 24, 2025**

**BETWEEN**

**LUCIA NYAMBURA NGUGI ..... PLAINTIFF**

**AND**

**JOSEPH KAMAU ALIAS GITHAIGA & 123 OTHERS ..... DEFENDANT**

**RULING**

1. The plaintiff/Applicant moved the court vide a Notice of Motion dated 23.5.2024 brought pursuant to Section 3A of the Civil Procedure Act, and Order 9 Rule 9 of the [Civil Procedure Rules, 2010](#) seeking orders:
  - a. That this Honourable court be pleased to grant leave to the firm of Njeri Kuria & Company Advocates to formally come on record for the Plaintiff.
  - b. That the Notice of Change of Advocates filed herein be deemed as duly filed.
  - c. That the costs of this application be provided for.
2. The application is anchored on the supporting affidavit of Lucia Nyambura Kuria sworn on 23.5.24. In the said affidavit she avers that she has never instructed the firm of Milimo Muthomi & Co Advocates to act for her. She stated that the said firm has been acting for one James Thendu Gitau who purports to be her son-in law.
3. She denied that she owed the firm of Milimo and Muthomi & Company Advocates any amount as she had never instructed them. She claimed that the said firm in collusion with their client James Thendu Gitau was out to frustrate her and they were withholding one of her title deeds in respect of Land Reference No. 30568, I.R 228053 illegally.



4. She deposed that the said firm has gone ahead and filed an Bill of Costs to the exaggerated tune of Kshs. 26,000,000 yet they took over her matter from her previous advocates without her consent and at the tail end of the case on the instructions of James Thendu Gitau.
5. She averred that she had instructed the firm of Njeri Kuria & Company Advocates to pursue the matter on her behalf. She stated that she was advanced in age, fragile and ailing and she should be protected from the activities of the firm of Milimo and Muthomi & Company Advocates which has been working in collusion with James Thendu Gitau against her interests. She urged the court to grant the orders sought in her application.
6. In opposition to the application, Mr. S.M Muthomi filed a Replying Affidavit sworn on 6.6.2024 in which he deposed that the Applicant and her son –in–law, James Thendu Gitau went to their Thika office on 14.1.22 and instructed them to take over the matter after which they filed a Notice of Change of Advocates.
7. He further that upon perusal of the pleadings, they found it necessary to amend the pleadings in order to present the Applicant’s case in a logical manner. They have annexed copies of the Amended plaint and verifying affidavit signed by the Applicant.
8. He adds that the case subsequently proceeded for hearing and he led the Applicant in evidence-in – chief without any protest from her.
9. He avers that the Applicant ought to pay their fees indicated in the Bill of costs after which she could proceed to instruct any other law firm as she deems fit.
10. He denied that he had frustrated the Applicant and insisted that he represented the Applicant and not her son-in –law as can be discerned from the pleadings.
11. He maintains that James Thendu Gitau was married to the Applicant’s late daughter Cecilia Gathoni Ngugi.
12. In response to the Replying Affidavit, the Applicant filed a Further affidavit in which she reiterates that she had never instructed the firm of Milimo, Muthomi & Co Advocates. She accused the said firm of colluding with James Thendu Gitau to defraud her family of their land. She added that she would challenge the Bill of costs once it was served on her.
13. She deposes that she has a right to be represented by an advocate of her choice she should not be forced to work with an advocate who is out to defraud here. She adds that there are legal mechanisms for advocates to obtain their legal fees whenever an advocate-client relationship has been established.
14. The application was disposed of through written submissions.

### **Applicant’s Submissions**

15. Learned counsel for the Plaintiff submitted that a litigant has a right to choose to be represented by an advocates of her choice. She relied on the case of *Samson Okun Orinda v Ayub Muthee M’Igeta & 2 Others* HCCC No. 72 of 1995.
16. It was his submission that the firm of Milimo Muthomi & Company Advocates stands to suffer no prejudice based on the Plaintiff’s decision to appoint the firm of Njeri Kuria & Company Advocates to act on her behalf. Counsel also relied on the case of *David Mereka T/A Mereka & Company Advocates v County Government of Nairobi* (2021) eKLR and *William Audi Odode & Another v John Yier & Another* Civil Application No. NAI 360 of 2004 where the court held that parties must be allowed to choose their own counsel.



## Respondent's Submissions

17. On his part learned counsel for the Respondent Advocate submitted that although the Applicant alleges that she never instructed the firm of Milimo Muthomi & Company Advocates to represent her during the trial, she has not applied to set aside the judgment and decree of the court. He wonders why the Applicant should enjoy a judgment that was obtained without her consent.
18. It is counsel's contention that the Applicant is being mischievous as she filed the application after she purported to file an application to act in person. He submits that this was done after the firm of Milimo Muthomi & Company advocates handled the complex brief involving more than 104 defendants and obtained judgment in favour of the Plaintiff after which they filed their bill of Costs against the defendants for Kshs. 26,000,000.
19. He contends that the Applicant has not paid them any fees and she should be compelled to pay their fees before she changes advocates. He adds that they have filed their Advocate- Client Bill of Costs vide ELC Misc Application No. 70 of 2024 and the said Bill should be taxed before this application is determined.

## Analysis and Determination

20. I have considered the application, Replying affidavit and the rival submissions and the singular issue for determination is whether the application should be allowed.
21. The procedure for Change of Advocates after judgment is governed by Order 9 Rule 9 of the [Civil Procedure Rules, 2010](#) (CPR) provides that:

“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.”
22. The question that this court must grapple with is whether it can decline to grant an application brought under order 9 Rule 9 of the [Civil Procedure Rules](#) on the grounds that the Applicant has not settled her former advocates' fees.
23. The right to a fair hearing is enshrined in Article 50(2) (g) of the [Constitution](#) and it includes the right of a litigant to choose and be represented by an advocate and to be informed of this right promptly.
24. In the case of [Samson Okun Orinda v Ayub Muthee M'igweta & 2 Others](#) (2013) eKLR the court held as follows:

“...Further under Article 50(2) (g) of the [Constitution](#) of Kenya ,2010 any party to a suit has a right to choose to be represented by an advocate of his choice. No advocate can impose himself upon a client simply because he has not been paid his professional fees in full. The advocate who has not been paid his professional fees has a remedy to file an Advocate-client Bill of costs for taxation of his fees but he cannot simply say, since I have not been paid my fees in full, I shall continue to act for you whether you like it or not. Nor can he insist on being given a guarantee that all his unpaid professional fees would be paid before a new counsel is



allowed to come on record. As the law provides for a mechanism on how an Advocate can recover his unpaid fees from his former client who has changed his Advocate, the former counsel cannot be heard to say any change of Advocate should not be allowed as he would be greatly prejudiced if an incoming Advocate is allowed to come on record.

There is no prejudice if a party who seeks to change an advocate has his application allowed. There is prejudice on the other hand to the party who has to change his advocate if the change of Advocate is denied”.

25. Similarly, in the case of *William Audi Odode & Another v John Yier & Another* Court of Appeal Civil Application No. Nai 360 of 204 the Court of Appeal observed that:

“It is not the business of the courts to tell litigants which advocate should or should not act in a particular matter. Indeed, each party to a litigation has the right to choose his or her own advocate and unless it is shown to a court of law that the interests of justice would not be served if a particular advocate were allowed to act in a matter, the parties must be allowed to choose their own counsel”.

26. What can be discerned from the above mentioned authorities is that the provisions of Order 9 of the *Civil Procedure Act* are not intended to impede the right of a party to be represented by an Advocate of his/her choice, but it sets out the procedure to be adhered to when a party wants to change counsel so as to avert any undercutting or chaos. Thus a party so wishing to change his counsel must notify the court and other parties. The mischief that this provision tries to cure is to prevent parties from changing their advocates after judgment has been rendered without the knowledge of their advocates so as to avoid paying their fees. In the instant case, the Plaintiff’s former advocates have indicated that they have filed their Advocate-Client Bill of Costs and the same is due for taxation. There is therefore no good reason why the Plaintiff should be prevented changing their advocates. I must however point out that the Applicant has made inflammatory and unsubstantiated claims of fraud against her former advocates and the same are expunged from the record.

27. I therefore find merit in the application and I allow it. The costs of the application shall be borne by the Respondent.

**DATED, SIGNED AND DELIVERED AT THIKA THIS 24<sup>TH</sup> DAY OF APRIL 2025**

.....

**J. M ONYANGO**

**JUDGE**

In the presence of :

1 Mr Ochieng for Ms Njeri for the Applicant

2 Mr Muthomi for the Plaintiff/Respondent

Court Assistant: Hinga

