



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT EMBU**  
**Civil Case 82 of 2006**

**MWANIKI NGIRI.....PLAINTIFF**

**VERSUS**

**ROBERT MWANIKI GUKEMBA.....DEFENDANT**

**RULING**

I have considered the application and heard both counsel on this matter. The spirit and intent of Order III Rule 9 A of the Civil Procedure Rules was to stop a litigant from hopping from one advocate to another while avoiding the payment of fees especially after a matter has been concluded.

In this case, both counsel concede that there is a bill of costs Advocate/Client pending before the Deputy Registrar. It is clear:- that the plaintiff herein has not discharged his responsibility to his counsel. The court should not be used to aid him to avoid that responsibility. Mr. Muraguri has been in the matter and handled it upto Judgment level. If he has to be replaced, the plaintiff should pay him what he is owed. As at now, his interests have not been secured and in all fairness, the bill of costs before the Deputy Registrar should be sorted out before the plaintiff herein is allowed to engage another counsel. I appreciate the fact that he has a right of representation by counsel of his choice but that goes hand in hand with his responsibility to ensure that he pays his fees to the counsel on record as the matter was not pro bono.

My decision is that the application for leave is denied. Let the plaintiff sort out his pending issues with this advocate on record first before another counsel can be allowed to come on record.

**W. KARANJA**

**JUDGE**

**2/7/2008**