

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL DIVISION, MILIMANI

CIVIL CASE NO.864 OF 1998

SIMIYU ABIUD WASIKE.....PLAINTIFF

VERSUS

MICHAEL ROTICH MAINA.....DEFENDANT

R U L I N G

This is an application by Chamber Summons dated 17th September, 2004 under Rule 9A of Order III of the Civil Procedure Rules (the Rules) for leave to be granted to ***M/S KIPKENDA, LILAN & CO., ADVOCATES*** to come onto the record for the Defendant/Judgment-Debtor herein in place of ***M/S MIGOS OGAMBA & CO., ADVOCATES***. The application is opposed by the said Migos Ogamba & Co., Advocates, principally upon the ground that their fees have not been paid by the Defendant/Judgment-Debtor. I am yet to understand the purport of the aforesaid rule 9A of Order III.

But it cannot have been the intention of the Rules Committee to deny a litigant the right of representation by an advocate of his choice at any stage of the proceedings. Nor can it have been their intention that the court do collect for an advocate whose instructions have been withdrawn his fees for work done. After all, there are provisions under the Advocates Act, Cap.16 and the Advocates (Remuneration) Order made thereunder by which such advocate can collect his fees.

I find no reason at all why I should deny the Defendant/Judgment-Debtor the right to be represented by an advocate of his choice. M/s Migos Ogamba & Co. have other avenues by which they can collect their fees from the Defendant/Judgment-Debtor. I will therefore grant the application with no order as to costs. Order accordingly.

DATED AND SIGNED AT NAIROBI THIS 6TH DAY OF OCTOBER 2004.

H. P. G. WAWERU

JUDGE