



In re Estate of the Late Joseph Tiongoi Chirchir (Deceased) (Miscellaneous Application Probate & Administration 25 of 2018) [2025] KEHC 6711 (KLR) (26 May 2025) (Ruling)

Neutral citation: [2025] KEHC 6711 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
MISCELLANEOUS APPLICATION PROBATE & ADMINISTRATION 25 OF 2018**

RN NYAKUNDI, J

MAY 26, 2025

**IN THE MATTER OF THE ESTATE OF THE LATE JOSEPH TIONGOI
CHIRCHIR (DECEASED**

AND

IN THE MATTER OF AN APPLICATION BY

JHAMES KIBIWOT MOIBEN.....1ST APPLICANT

BENJAMIN KIPLIMO

SAMOEL.....2ND APPLICANT

DANIEL YEGO.....3RD APPLICANT

MATAYO SNAG ALIAS MATHEW KIPRUTO SANG.....4TH

APPLICANT

=VERSUS=

EVALYN CHIRCHIR.....RESPONDENT

BETWEEN

JHAMES KIBIWOT MOIBEN 1ST APPLICANT

BENJAMIN KIPLIMO SAMOEL 2ND APPLICANT

DANIEL YEGO 3RD APPLICANT

MATAYO SNAG ALIAS MATHEW KIPRUTO SANG 4TH APPLICANT

AND

EVALYN CHIRCHIR RESPONDENT



RULING

1. Before this court is an application dated 4/4/2024, seeking the following orders:
 - i. That: Leave be granted to the firm of M/s Isiaho Sawe & Co Advocates to cease acting on behalf of the Applicants/Objectors
 - ii. That the costs of this application be in the cause Which Application is supported by the annexed affidavit of Isiaho M Laureen and upon such other and/or further grounds to be adduced at the hearing hereof:
Which Application is supported by the annexed affidavit of ISIAHO M LAUREEN and upon such other and/or further grounds to be adduced at the hearing hereof:
 - i. That the firm of M/s Isiaho Sawe & Co. Advocate intends to formally cease acting for the Applicant/Objectors herein.
 - ii. That the said firm of M/s Isiaho Sawe & Co. Advocates cannot proceed with this matter diligently due to the fact that it has lost touch with the Applicants/Objectors.
 - iii. That from the aforesaid reason, the said firm cannot diligently prosecute the cause to its logical conclusion hence rendering leave to cease acting necessary
 - iv. That it is in the interest of justice that the firm of M/s Isiaho Sawe & Co Advocates be allowed to formally cease acting for the said Applicants/objector herein for the aforementioned reasons
2. It is further supported by an affidavit sworn by Isiaho M. Laureen which states as follows
 - i. That I am an Advocate of the High Court of Kenya practicing as such in the name of style of M/s Isiaho Sawe & Company Advocates
 - ii. That I was instructed to prosecute of this matter for and or behalf of the Applicants herein hence rendering me competent to swear this affidavit.
 - iii. That the firm of M/s Isiaho Sawe & Co Advocates cannot proceed with this matter due to the fact that I have lost touch with the Applicants/Objectors
 - iv. That from the aforesaid reasons, the said firm cannot diligently prosecute this cause to its logical conclusion hence rendering leave to cease acting necessary
 - v. That this application is mandatory to be ceased of further instructions to act for a party as stipulated by law
 - vi. That this application has been made promptly and in utmost good faith in the best interest of justice
 - vii. That the Applicants/Objectors will not be prejudiced in any way should the orders sought herein are granted as the is at liberty to either act in person and/or instruct a counsel for her choice
 - viii. That this Honourable court is vested with the power and/or directions to allow this application as prayed which discretion I urge it to exercise
3. This chamber summons was duly served upon the client to meet the requirements of the law. The law is crystal clear under Order 9 Rule 13 of the [CPR](#) which provides that: 13(1) “Where an advocate who



has acted for a party in a cause or matter has ceased so to act and the party has not given notice of change in accordance with this order, the advocate may on notice to be served on the party personally or by prepared post letter addressed to his last – known place of address, unless the Court otherwise directs, apply to the Court by summons in chambers for an order to the effect that the advocate has ceased to be the advocate acting for the party in the cause or matter, and the Court may make an order accordingly:

Provided that, unless and until the advocate has –

- a. Served on every party to the cause or matter (not being a party in default as to entry of appearance) or served on such parties as the Court may direct a copy of the said order; and
 - b. Procured the order to be entered in the appropriate Court; and
 - c. Left at the said Court certificate signed by him that the order has been duly served as aforesaid, he shall (subject to this order) be considered the advocate of the party to the final conclusion of the cause or matter including any review or appeal.”
4. It goes without saying “ The law permits every (person) to try (her) own case, but the lay vision of every man his own lawyer has been shown by all experience to be an illusion. It is a virtual impossibility for a (person) to conduct even the simplest sort of a case under the existing rules of procedure, and this fact robs the in forma pauperis proceeding of much of its value to the poor unless supplemented by the providing of counsel.....We can end the existing denial of justice to the poor if we can secure an administration of justice which shall be accessible to every person no matter how humble and which shall be adjusted so carefully to the needs of the present day world that it cannot be dislocated, or the evenness of its operation be disturbed, by the fact of poverty (See Reginald Hebbert Smith, Justice and the Poor 8, 15 (Patterson Smith publ 3d ed. 1972)
5. Legal representation is a constitutional imperative provided for in Article 50 2(g) and (H) of the constitution. In its simplest form having an advocate facilitates provision of legal professional services in a legal matter before a court of law. This includes representing a party in court giving advise on one’s legal rights, preparing and filing claims, petitions, suits, or applications, before the various forums within our legal system. It is a fundamental right in our legal system for it ensures fair access to justice to all under Article 48 of the constitution regardless of their financial status. The Application at bar, deals with that right and it is often based on a contractual instrument. It appears that the client to the advocate on record has breached some of the contractual obligations necessitating the filing of the instant Chamber Summons. Having considered the application together with the supporting affidavit there is merit in granting the orders for the Law firm Isiaho Sawe & Co Advocates to cease acting on behalf of the Applicants/Objectors.

GIVEN UNDER MY HAND AND THE SEAL OF THIS COURT THIS 26TH DAY OF MAY 2025

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R. NYAKUNDI
JUDGE

