



**Directline Assurance Company Limited v Okwanyson & another;
Jono Consult Auctioneers & another (Interested Parties) (Civil Appeal
E133 of 2023) [2025] KEHC 8753 (KLR) (23 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8753 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CIVIL APPEAL E133 OF 2023
A MABEYA, J
JUNE 23, 2025**

BETWEEN

DIRECTLINE ASSURANCE COMPANY LIMITED APPELLANT

AND

ELIJAH OMOLLOH OKWANYSON 1ST RESPONDENT

NILAM ENTERPRISES 2ND RESPONDENT

AND

JONO CONSULT AUCTIONEERS INTERESTED PARTY

DOE ANYUL & COMPANY ADVOCATES INTERESTED PARTY

RULING

1. By a Motion dated 16/6/2025, brought under inter alia, Order 9 Rule 9 of the Civil Procedure Rules, the firm of Ondego Garo Advocate sought leave to come on record for the 1st Respondent. The grounds were that Judgment had been entered on 17/5/2025. That todate, the 1st respondent was being represented by the firm of Warindu & Company Advocates.
2. The 1st respondent swore that he had been kept in the dark by his erstwhile Advocates on the case. That on 2/11/2024, he discovered his advocates were entering consents without his authority. That as a result, he concluded that the said firm was not interested in protecting his interests.
3. That for the foregoing reason, he had decided to appoint the firm of Ondego Garo Advocates in the stead of the said Warindi & Company Advocates.
4. The application was opposed by the firm of Peter M. Warindu & Company Advocates vide the undated replying affidavit of Peter Warindu. He deposed that his firm had diligently represented the 1st



- respondent. That the firm had ensured the 1st respondent had received part of the settlement amount. That the 1st respondent had not visited the firm's office to complain about anything.
5. That the Bill of Costs filed in the subordinate court was at taxation stage. That the 1st respondent cannot now seek to ditch his firm which has stood by him and had successfully represented him. In his submissions, Mr. Gwada submitted that the firm cannot be replaced at this stage until costs and fees have been settled.
 6. This is an application for leave by a firm of advocates to come on record in the place of another. This is a requirement under Order 9 Rule 9 of the Civil Procedure Rules. That sub rule provides: -
 - “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.”
 7. The letter and spirit of this provision was to protect Advocates from clients who would wait until judgment is entered the ditch the unsuspecting Advocates. The relationship between an advocate and client is contractual. It is not statutory. Like all other contracts, they are voluntary, they can be dissolved at will with the usual consequences. A client has the right to appoint an advocate of his own choice.
 8. The provision was enacted in order to protect unsuspecting advocates. It was important that an advocate be notified that his services have been terminated. This enables the advocate to court his losses by drawing and taxing his bills.
 9. In the present case, it is noted that the firm of Warindu & Company has already prepared bills of costs for taxation.
 10. In view of the foregoing, Warindu & Company Advocates having been notified that their services are no longer needed by the 1st respondent, it is up to them to proceed and have their bills of costs taxed. In the meantime, the 1st respondent will be permitted to proceed and be represented by a firm of advocates of his own choice.
 11. Accordingly, I find the application dated 16/6/2025 to be meritorious and allow the same as prayed.
It is so ordered.

DATED AND DELIVERED AT KISUMU THIS 23RD DAY OF JUNE, 2025.

A. MABEYA, FCI Arb

JUDGE

