



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**

**ELC. CASE NO. 84 OF 2015**

**ELIJAH MBATHA KITHIMBA ..... PLAINTIFF**

**VERSUS**

**MEDIVEST COMPANY LIMITED ..... DEFENDANT**

**RULING**

1. In the Notice of Motion dated 20<sup>th</sup> March, 2019, the Plaintiff has sought for the following reliefs:

*a. That leave be granted to the firm of M/S Kyalo & Associates Advocates to act for and on behalf of the Plaintiff herein in place of M/S Nzioki Mutua & Associates Advocates.*

*b. That the costs of this Application be in the cause.*

2. The Application is premised on the grounds that the firm of Nzioki Mutua & Associates Advocates has been acting for the Plaintiff; that the Plaintiff has since instructed the firm of M/s Kyalo & Associates Advocates to take over the conduct of the matter and that the Application should be allowed.

3. In response, Fred Mutua Advocate deponed that he was instructed to have the conduct of this suit on behalf of the Plaintiff; that the Application has no force in law and that the real intention of the Plaintiff is to evade payment of his fees.

4. Both the Applicant and Respondent filed submissions which I have considered.

5. This is one of those Applications which are meant to waste judicial time. Indeed, it is one of those Applications that should never be opposed in the first place.

6. The right to representation of an individual by an advocate of his choice is a constitutionally guaranteed right. That being the case, a litigant has the right to hire and fire an advocate at any stage of the proceedings, the only rider being that he can only represent himself, or retain the services of another advocate after Judgment with the leave of the court.

7. In my view, I cannot contemplate a situation where an advocate would insist that the court should not grant an Applicant leave to engage the services of another advocate after Judgment. Indeed, the only purpose that the Application for leave serves is to notify the advocate whose services have been terminated that his client intends to terminate his services, and for the said advocate to commence proceedings in respect of his fees, if he so wishes.

8. Indeed, I have perused the Respondent's Replying Affidavit and I have not come across any plausible reason why the Application dated 20<sup>th</sup> March, 2019 has been opposed. The non-payment of legal fees by the Plaintiff cannot be a ground for opposing the Application dated 20<sup>th</sup> March, 2019. The Respondent's recourse is to commence separate proceedings in respect of his legal fees.

9. For the reasons I have given above, I allow the Application dated 20<sup>th</sup> March, 2019 as prayed.

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 31<sup>ST</sup> DAY OF JANUARY, 2020.**

**O.A. ANGOTE**

**JUDGE**