



**Republic v Ministry of Interior & Coordination of National Government & 7 others; Cherop & 3 others (Interested Parties); Kimaron (Substituted with Argut Kimaron) & another (Ex parte Applicants) (Judicial Review Cause 5 of 2022) [2025] KEELC 7080 (KLR) (13 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7080 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ITEN  
JUDICIAL REVIEW CAUSE 5 OF 2022**

**L WAITHAKA, J  
OCTOBER 13, 2025**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**MINISTRY OF INTERIOR & COORDINATION OF NATIONAL GOVERNMENT ..... 1<sup>ST</sup> RESPONDENT**

**THE COUNTY COMMISSIONER, BARING COUNTY ..... 2<sup>ND</sup> RESPONDENT**

**THE MINISTRY OF LANDS, HOUSING AND URBAN DEVELOPMENT ..... 3<sup>RD</sup> RESPONDENT**

**THE DIRECTOR OF LAND ADJUDICATION, NAIROBI ..... 4<sup>TH</sup> RESPONDENT**

**THE DIRECTOR OF SURVEYS ..... 5<sup>TH</sup> RESPONDENT**

**THE COUNTY LAND ADJUDICATION OFFICER, BARINGO COUNTY ..... 6<sup>TH</sup> RESPONDENT**

**THE COUNTY LAND REGISTRAR, BARING COUNTY ..... 7<sup>TH</sup> RESPONDENT**

**THE ATTORNEY GENERAL ..... 8<sup>TH</sup> RESPONDENT**

**AND**

**BENJAMIN CHEROP ..... INTERESTED PARTY**

**JOHN KANDIE CHELIMO ALIAS JOHN T CHELIMO .... INTERESTED PARTY**

**JOHN CHEPKANGO'R ..... INTERESTED PARTY**

**BARNABA KURGAT ..... INTERESTED PARTY**

**AND**



**CHEMJOR KIMARON (SUBSTITUTED WITH ARGUT KIMARON) .... EX  
PARTE** **APPLICANT**  
**BENSON CHEMJOR KIMARON ..... EX PARTE APPLICANT**

**RULING**

1. Chemjor Kimaron and Benson Chemjor Kimaron, hereinafter referred to as the applicants, filed the notice of motion application dated 9th May, 2025 seeking leave of this court to change their advocates on record from the firm of Joseph C.K. Cheptarus & Co. Advocates to M/S Arusei & Company Advocates after judgment.
2. The application is expressed to be brought under Order 9 rule 9; Order 50 rule 1 of the Civil Procedure Rules; Section 3A of the Civil Procedure Act and all other enabling provisions of the law.
3. It is the applicant's case that it is in the interest of justice that they be allowed to be represented by counsel of their choice and that no prejudice will be occasioned to the respondents and interested parties if their application is allowed.
4. The application is opposed by the interested parties, through the interested parties' replying affidavit sworn on 24<sup>th</sup> June, 2025 on the grounds that it is fatally defective, bad in law, an abuse of court process and misconceived in that there is no suit pending in court on which the application can hinge; that the reasons advanced by the applicant for changing their advocate have been overtaken by events because the applicant's application for leave to file appeal out of time was dismissed by the court of appeal and that the applicants will have an opportunity to use an advocate of their choice in the right forum.
5. The interested parties have further deponed that the application should not be countenanced by this court because there was inordinate delay in bringing it, making it an afterthought.
6. In a rejoinder, the applicants filed a supplementary affidavit, sworn on 11<sup>th</sup> July 2025 in which they have deponed that their application is grounded in law hence neither defective nor an abuse of the court process; that their intention of change of advocate is lawful, proper in law and protected under Article 25(c) and Article 50(2)(g) of the Constitution of Kenya; that the purpose for which they seek to change their advocates is not spent as contended by the interested parties as they can still institute other proceedings in court or courts concerning their grievances and that the litigation in issue touches on their ancestral land, a matter they intend to litigate fully.
7. The applicants have further deponed that the application has been brought at the earliest opportunity and reiterated their contention that the interested parties will suffer no prejudice if their application is allowed.
8. Pursuant to directions given on 26<sup>th</sup> June 2025 that the application be disposed of by way of written submissions, the applicants filed submissions on 17<sup>th</sup> July 2025 in which they have rehashed the grounds on the face of the application and cited several cases in support of their case.
9. I have carefully read and considered the application, the opposition thereto, the submissions filed in respect thereof and the applicable law.



10. As pointed out herein above, the applicants seek leave of this court to change their advocates on record after judgment. The basis for doing so is expressed to be Order 9 rule 9 of the Civil Procedure Rule. The rule in question provides as follows:-

“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.”

11. The rationale of Order 9 Rule 9 of the Civil Procedure Rule has been given, in several decided cases as protection of the outgoing advocate. In that regard, see the case of S.K. Tarwadi vs Veronica Muehlemann (2019) eKLR, where Korir J. stated/held:-

“The essence of Order 9 Rule 9 CPR is to protect advocates from mischievous clients who will wait until a judgement has been delivered and then sack the advocate and either replace him with another advocate or act in person...”.

12. In the circumstances of this case, the outgoing advocate has not opposed the application for change of advocate filed by the applicant. The opposition is by the interested parties to the dispute. The reason given for opposing grant of the orders sought is that there is no appeal pending in court on which the application can hinge.

13. While the reason given by the interested parties is factually correct, I have taken into account the explanation offered by the applicants that non existence of an appeal does not stop them from changing their advocates for purposes of other proceedings arising from the judgment and decree of this court.

14. Cognizance of the fact that a judgment and/or a decree is not the end of the legal proceedings relating to a suit, as there are other proceedings like appeals and execution proceedings in respect of which parties may still need legal representation and further taking into account the decision of the Court of Appeal in Tobias M. Wafubwa vs Ben Butali (2017) eKLR where the court stated/held:-

“...Once a judgment is entered, save for matters such as applications for review or execution or stay of execution inter alia, an appeal to an appellate court is not a continuation of proceedings in the lower court, but a commencement of new proceedings in another court, where different rules may be applicable, for instance, the Court of Appeal Rules, 2010 or the Supreme Court Rules, 2010. Parties should therefore have the right to choose whether to remain with the same counsel or to engage other counsel on appeal without being required to file a Notice of Change of Advocates or to obtain leave from the concerned court to be placed on record in substitution of the previous advocate. As this dispute concerned an appeal from the Principal Magistrate’s Court to the High Court, it involved the commencement of new proceedings, and we are satisfied that the respondent’s counsel was entitled to commence them without filing a Notice of Change of seeking the leave of the court to be placed on record.”

15. In the circumstances of this case/application, where the application by the applicants is not opposed by the outgoing advocates and where the interested parties have not demonstrated what prejudice, if any, they stand to suffer if the application is allowed, I find and hold that it will serve no purpose to deny the applicant leave to change their advocate, since for proceedings post appeal like filing appeal and other proceedings regarding the appeal, even without the leave of this court, on the strength of the decision



of the Court of Appeal in the case of Tobias M. Wafubwa vs Ben Butali, the applicants are at liberty to appoint a new advocate or advocates to represent them in such proceedings. Consequently, I allow the applicant's notice of motion application dated 9<sup>th</sup> May 2025 in terms of prayer (2) and (3) thereof.

16. On costs, I order that each party shall bear their own costs of the application as there was no reasonable basis for bringing the application by the applicant and opposing the same by the interested parties.
17. Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KABARNET THIS 13<sup>TH</sup> DAY OF OCTOBER, 2025.**

**L. N. WAITHAKA**

**JUDGE**

Ruling read virtually in the presence of:-

Mr. Arusei (Intended Counsel for Exparte applicant).

No appearance for the 1<sup>st</sup> Interested Party & Respondents.

Ms Kailei h/b for Mr. Sambu for the 2<sup>nd</sup> Interested Party.

Court Assistant; Ian.

