



**Wakaba v County Government of Kiambu (Environment and Land Case  
30 of 2021) [2025] KEELC 7223 (KLR) (16 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7223 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT AND LAND CASE 30 OF 2021  
JM ONYANGO, J  
OCTOBER 16, 2025**

**BETWEEN**

**FRANCIS NDUNGU WAKABA ..... PLAINTIFF**

**AND**

**COUNTY GOVERNMENT OF KIAMBU ..... DEFENDANT**

**RULING**

1. Coming up for determination is the Plaintiff's Notice of Motion Application dated 5th February 2025, seeking leave to change advocates after judgment in the suit has been entered.
2. The Application is supported by the Affidavit sworn on even date by Joseph Wambugu Gaita, an advocate practicing in the firm of Gaita & Company Advocates, the intended new advocates. He stated that his firm had been instructed to take over the conduct of the matter on behalf of the Plaintiff from the previous advocates, L. Maina Irungu & Company Advocates.
3. He further averred that since judgment had been delivered in the matter on 17th October 2022, leave of the court was necessary before a change of advocates could be effected. He deposed that he had written to the said firm on 19th December 2024, but no response had been received. He contended that it was in the interest of justice for the Application to be allowed so that the Plaintiff could proceed with execution to realize the ends of justice.
4. The Plaintiff advocates on record M/s L. Maina Irungu & Company Advocates opposed the Application through a Replying Affidavit sworn by Lawrence Maina Irungu, Advocate on 7th February 2025.
5. He stated that he had been on record for the Plaintiff from the inception of the suit. He deposed that he objected to the intended takeover of the matter by another firm of advocates on the ground that the Plaintiff had not settled his outstanding legal fees, which as of 14th August 2023 amounted to Kshs. 1,092,577.50. He further averred that even after 14th August 2023, his firm continued to handle the



matter, including attending to an application to show cause against the Defendant/Judgment-Debtor. He urged the court to order the Plaintiff or the Intended New Advocate to settle the outstanding legal fee before allowing them to file a Notice of Change of Advocates.

6. The application was canvassed by way of written submissions. The firm of M/s Gaita & Company Advocates filed written submissions dated 25th April 2025, while the firm of M/s L. Maina Irungu & Company Advocates filed theirs dated 23rd April 2025.

### **Plaintiff/Applicant's Submissions**

7. The Applicant's intended new counsel submitted that the Applicant sought leave of the court to effect a change of advocates despite his former advocate's objection based on unsettled legal fees. Counsel argued that while the former advocate was entitled to payment, this should not prevent the Applicant from exercising his constitutional right to legal representation of his choice. He explained that the matter had already been concluded in favour of the Applicant and that the new advocate was being engaged only to handle post-judgment execution proceedings.
8. Relying on the decisions in *Samson Okun Orinda vs Ayub Muthee Igweta & 2 Others* [2013] eKLR and *Wilberforce Osodo vs Attorney General & 2 Others* [2019] eKLR, counsel submitted that no advocate could impose himself upon a client for non-payment of fees and that such disputes should be resolved through taxation or separate legal action. He added that once confidence between an advocate and client had broken down, continued representation was untenable. He therefore urged the court to allow the application as prayed.

### **Respondent's Submissions**

9. Counsel submitted that the application was based only on the desire to proceed with execution, without showing any impropriety or neglect by the current counsel. He explained that his firm had been instructed in February 2021 and had diligently handled the matter up to judgment and taxation. He opposed the takeover, arguing that the Plaintiff had not settled outstanding legal fees amounting to Kshs. 1,092,577.50, and therefore, he retained a lien over the file. Counsel noted that a Party and Party Bill of Costs had already been taxed at Kshs. 728,385 and under the Advocates (Remuneration) Order, those costs should be increased by fifty percent (50%) to determine advocate-client fees. He emphasized that the execution process had already commenced under his instruction, and the ongoing Notice to Show Cause was only delayed by the present application.
10. Citing *Clement Munyao Kakenyi vs Florence Mwangangi & Co. Advocates* [2021] eKLR, he maintained that he was entitled to hold the file until his fees were paid. He further submitted that the record clearly showed his continued diligence in pursuing execution of the decree, which had only been delayed because the judgment was against a government entity and was subject to Sections 13A and 21 of the *Government Proceedings Act*. He therefore urged the court to dismiss the application with costs.

### **Analysis and Determination**

11. The singular issue for determination is whether the Plaintiff should be granted leave to effect a change of advocates after judgment has been entered in this matter.
12. Order 9 Rule 9 of the Civil Procedure Rules provides that where there is a change of advocate after judgment has been delivered, such change shall not be effected without an order of the court upon an application with notice to all the parties. The purpose of this provision is to ensure that the rights and obligations of the existing advocate, particularly in relation to costs, are protected before substitution is allowed.



13. It is not in dispute that judgment in this matter was delivered on 17th October 2022. It is therefore mandatory that the Plaintiff obtains leave of the court before the new advocates come on record.
14. The Respondent's counsel's objection is premised on non-payment of professional fees and a claim for a lien over the file. However, the court is guided by the established principle that a dispute over fees does not bar a client from changing advocates. The proper recourse for an advocate in such circumstances lies in the taxation of the advocate-client bill of costs or recovery proceedings under the Advocates Act.
15. In *Samson Okun Orinda vs Ayub Muthee Igweta & 2 Others* [2013] eKLR, the court held that no advocate can impose himself upon a client merely because his professional fees have not been paid, as the client retains the fundamental right to legal representation of their choice. This position was reaffirmed in *Wilberforce Osodo vs Attorney General & 2 Others* [2019] eKLR, where the court underscored the constitutional right to counsel of one's choice as guaranteed under Article 50(2)(g) and (h) of the Constitution.
16. The court notes that the advocate's lien over the file is a legitimate protection mechanism for unpaid fees, but it cannot extend to fettering the Plaintiff's access to justice or choice of representation. The proper balance lies in allowing the change while preserving the outgoing advocate's right to pursue his fees.
17. In the present case, there is no evidence that the Plaintiff is attempting to evade payment. Rather, the intended change appears motivated by the need to facilitate post-judgment execution. The court therefore finds merit in the application.
18. Consequently, the Plaintiff is granted leave to effect a change of advocates from M/s L. Maina Irungu & Company Advocates to M/s Gaita & Company Advocates. However, the outgoing advocate is at liberty to retain a lien over the file pending settlement of his fees, and/or to pursue recovery through taxation or any other lawful means.
19. Each party shall bear its own costs of the application.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 16TH DAY OF OCTOBER 2025.**

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**J. M. ONYANGO**

**JUDGE**

In the Presence of:

Ms Sultani for Mr Gaita for the Plaintiff

Mr Irungu for the Respondent

Court Assistant: Hinga

