



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT NAIROBI**  
**CAUSE NO. 624 OF 2011**  
**ALLAN KAGARI LUMADEDE .....CLAIMANT**  
**VERSUS**  
**ALSIDCO ALARMS LIMITED .....RESPONDENT**

M/s Chege for respondent/applicant

M/s Serem for claimant/respondent

**RULING**

1. The notice of motion application dated 27<sup>th</sup> May 2015 is brought by R. W. Chege and Associates advocate for respondent.
2. The application seeks to vary the orders made on 8<sup>th</sup> October 2014, on the applicant's application dated 30<sup>th</sup> September 2014 and set aside leave granted to the firm of Ondieki and Ondieki Advocates to come on record in this cause.
3. The application is based on the grounds set out on the face of the notice of motion to wit;
  - (I.) That the respondent/applicant was not served the application dated 30<sup>th</sup> September 2014 despite being on the face of the application stated to be for service upon the respondent, the applicant came to learn of the application and orders thereof only on 27<sup>th</sup> April 2015 when the matter came up in court.
  - (II.) That in law the firm of Ondieki and Ondieki Advocate has not legal capacity to file the bill of cost in this cause with the firm of Rachier and Amollo advocates being the official administrator of the firm of the deceased advocate Nesbit Ojwang.
  - (III.) That without legal authority to administer the firm of the deceased advocate Nesbit Ojwang who was the sole proprietor of the firm on record, O. N. Ojwang and Company Advocates when the instant cause was handled to the judgment the actions of Ondieki and Ondieki Advocates in this cause are a nullity.
4. The application is fully supported by the affidavit of Said A. A. Maalim the respondent's Director sworn on 27<sup>th</sup> May 2015.

5. The application is opposed by Ondieki and Ondieki Advocates who were granted leave on 8<sup>th</sup> October 2014 to come on record for the claimant.
6. The leave was granted upon Mr. Serem for the firm of Ondieki and Ondieki Advocates informing the court that they had communicated to the firm of Rachier and Amollo Advocates and had no response.
7. Ondieki and Ondieki Advocates state that they were appointed by the claimant to come on record on his behalf to finalize the matter by facilitating the payment of the award, the interest on the award and costs as granted by the court. The claimant later filed a bill of costs dated 17<sup>th</sup> July 2014 in a bid to claim the costs of the suit.
8. The respondent opposed the bill of costs on ground that the law firm of Ondieki and Ondieki Advocate had no authority to represent the claimant hence the application for leave which was granted by the court.
9. That the application was served upon the law firm of Rachier and Amollo Advocates as directed by the court.
10. The claimant states that he has a constitutional right to be represented by a lawyer of choice.
11. The claimant submits that the argument that the firm of Ondieki and Ondieki Advocates cannot represent the claimant because the firm of Rachier and Amollo Advocates had been appointed the official administrator of the firm of the deceased advocate Nesbit Ojwang which firm hitherto had the conduct of this matter to judgment upon demise of advocate Nesbit Ojwang, has no basis because the law firm of Rachier and Amollo Advocates allowed the claimant to instruct any other law firm of his choice to proceed with the cause.
12. That the sole purpose of the appointment of the firm of Rachier and Amollo Advocates by the Law Society of Kenya as the official administrator of O N Ojwang and Company Advocates was to reconcile the deceased advocate's clients' accounts and to enhance proper management and disposal of the firm.
13. The law firm of Rachier and Amollo Advocates did all the above cited duties and vide a letter dated 31<sup>st</sup> January 2014, directed to this Honourable Court, declared that from the records available to them the claimant did not owe O. N. Ojwang and Company Advocates any money and the firm did not owe him (the claimant) any money whatsoever.
14. The claimant was therefore at liberty to appoint any other advocate of choice.
15. That the action by the respondent who has no business as to who represents the claimant, is solely aimed at delaying the execution of the judgment of the court.
16. The application by the respondent lacks merit and it be dismissed with costs.
17. No costs have been sought for the law firm of Ondieki and Ondieki Advocates. Claimant only seeks the costs of this suit as per the judgment delivered in court on 2<sup>nd</sup> May 2013.

### **Determination**

18. The respondent who is the judgment debtor in this suit has no legal interest or at all on the choice of the advocate the claimant wishes to represent him to recover costs and interests in this matter that has already been finalised.
19. It is clear that the firm of Rachier and Amollo Advocates, the official administrators of the firm of the deceased advocate Nesbit Ojwang who was in conduct of this cause before his death have already cleared the claimant from any liability or indebtedness to the firm of the late Nesbit Ojwang.

20. The application lacks merit on law and fact and is only meant to delay the taxation of costs in this matter.

21. The application is dismissed with cost to the claimant.

**Dated and delivered at Nairobi this 21<sup>st</sup> Day of April 2017**

**MATHEWS NDERI NDUMA**

**PRINCIPAL JUDGE**