



**Byegon & another (Suing as Administrator and Personal Representatives of Linner Chepkoech Chumo - Deceased) v Andy Forwarders Ltd & another (Civil Suit 6 of 2013) [2025] KEHC 11510 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11510 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
CIVIL SUIT 6 OF 2013  
JK SERGON, J  
JULY 31, 2025**

**IN THE MATTER OF THE ESTATE OF PHILIP KIKWAI CHERIRO (DECEASED)**

**BETWEEN**

**ROBERT KIPKEMOI ARAP BYEGON & DIANA CHEMTAI (SUING AS ADMINISTRATOR AND PERSONAL REPRESENTATIVES OF LINNER CHEPKOECH CHUMO - DECEASED) ..... PLAINTIFF**

**AND**

**ANDY FORWARDERS LTD ..... 1<sup>ST</sup> DEFENDANT**

**TAHIR SHEIKH SAID TRANSPORTERS LTD ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. The application coming up for determination is a notice of motion dated 6th August, 2018 seeking the following orders;
  - (i) Spent
  - (ii) That the firm of M/s Kirui Kipyegon & Company Advocates be granted leave to come on record on behalf of the plaintiff/applicant in place of the firm of Sila Munyao & Company Advocates.
  - (iii) Spent
  - (v) That the costs of this application be provided for.
2. The application is supported by grounds on the face of it and an affidavit in support of the application sworn by Robert Kipkemoi Arap Byegon, the plaintiff/applicant herein.



3. He avers that he has instructed the law firm of Sila Munyao & Company, Advocates to act on his behalf in prosecuting the instant suit and that judgment was entered on 31st May, 2018 for a sum of Kshs. 4,741,005/= plus costs together with interest on costs and damages.
4. He avers that APA Insurance forwarded a total sum of Kshs. 2,370,502.60/= on the 29th June, 2018 and the advocates on record failed, refused and neglected to remit the said money.
5. He avers that the advocates on record continuously failed to keep him informed on the status of the suit and that judgment was entered in their favour on 31st May, 2018.
6. He avers that the advocates on record breached the advocate-client relationship and discussed the particulars of the suit with a third party to wit Transnational Bank Ltd.
7. He avers that the advocates on record have denied him audience and information and consequently he has lost faith in the services of the law firm of Sila Munyao & Company Advocates and therefore urged this court to grant leave to the firm of M/s Kirui Kipyegon & Company Advocates to come on record in place of the said firm.
8. Onyango Oscar Omotto an advocate practicing with the firm of M/s O.M. Otieno and Company Advocates which firm was on record for the 1st Defendant filed a replying affidavit.
9. He avers that he is privy to the fact that the firm of M/s Sila Munyao & Company Advocates are on record for the plaintiff and were therefore recognised as agents of the plaintiff pursuant to order 9 of the Civil Procedure Rules.
10. He avers that following the delivery of the judgement on 31st January, 2019 the firm of M/s Sila Munyao & Company Advocates invited the 1st Defendant to pay half of the decretal sum and half of the costs mutually agreed upon so that the matter can be marked as fully settled between the plaintiff and the 1st Defendant.
11. He avers that they forwarded cheques totalling to Kshs. 2,370, 502.50/= to the firm of M/s Sila Munyao & Company Advocates and the firm signed a discharge voucher confirming the matter settled as between the plaintiff and the 1st Defendant, he attached copies of the cheques and discharge voucher.
12. He avers that they dispatched a cheque totalling to Kshs. 160,000/= to the firm of M/s Sila Munyao & Company Advocates in full settlement of costs to the suit and therefore the instant application which seeks to sort out the issue of representation between the plaintiff and his advocates need not involve the 1st Defendant who had settled his fair share of the decretal amount.
13. Ken Ochieng, an advocate practicing with the firm of Sila Munyao & Company Advocates filed a replying affidavit filed in response to the instant application.
14. He avers that they have been acting for the plaintiff until this matter was finalised and judgment was delivered in their favour in the sum of Kshs. 4,741,005/= alongside costs and interest and that the said sum has been partly paid to their offices.
15. He avers that the plaintiffs as representatives of the estate of the deceased and the firm disagreed on advocates fees payable in this matter and two other succession matter to wit Kericho High Court Succession No. 2 of 2012 and Kericho High Court Succession No. 171 of 2015 necessitating applications for taxation over the same, he attached copies of the applications.
16. He avers that Transnational Bank Ltd through its advocates on record filed and served them an application to have the respondents (plaintiffs herein) restrained from collecting and/or receiving the



- money they received in respect of the estate of Linner Chepkoech Chumo (Deceased) which orders were granted by the court, he attached a copy of the court order.
17. He further avers that the said orders were extended pending hearing and determination of the full suit and hence the reason part of the paid judgment is yet to be remitted to the plaintiffs.
  18. He avers that they are apprehensive that the plaintiff/applicants will not pay their fees once the bill of costs of taxed and therefore they wish to hold the decretal sum received on behalf of the estate of Linner Chepkoech Chumo as Lien until their application are heard and determined and further that the plaintiff/applicants are intent on defeating the intent of the garnishee proceeding against their firm.
  19. The application came up for inter partes hearing and this court directed parties to file written submissions.
  20. The firm of M/s Sila Munyao & Company Advocates which had represented the plaintiff in the instant suit filed their submissions. They reiterated that they acted for the plaintiff until this matter was finalised and judgment was delivered in their favour in the sum of Kshs. 4,741,005/= alongside costs and interest and that the said sum has been partly paid to their offices.
  21. The firm reiterated that the plaintiffs as representatives of the estate of the deceased and the firm disagreed on advocate's fees payable in this matter and two other succession matters necessitating applications for taxation over the same.
  22. The firm reiterated that Transnational Bank had served them with a garnishee order to have the plaintiff restrained from collecting and/or receiving money held on behalf of the estate of the deceased.
  23. The firm maintained that they are apprehensive that the plaintiff will not settle their fees and therefore they wish to hold the decretal sum received on behalf of the estate of the deceased as lien until their applications for taxation are heard and determined and that the plaintiff was keen on defeating the intent of the garnishee proceeding against their firm.
  24. I have considered the application, replying affidavits and written submissions on record and find that the issue for determination whether to grant leave to the firm of M/s Kirui Kipyegon & Company Advocates to come on record on behalf of the plaintiff/applicant in place of the firm of Sila Munyao & Company Advocates. It is clear based on the facts set out by the parties that the law firm of Sila Munyao & Company, Advocates acted on behalf of the applicant in prosecuting the instant suit and that judgment was entered on 31st May, 2018 for a sum of Kshs. 4,741,005/= plus costs together with interest on costs and damages. It is also clear that following the said judgment there has been a breakdown in the advocate-client relationship and therefore the applicant has moved this court to grant leave to the firm of M/s Kirui Kipyegon & Company Advocates to come record in place of the firm of Sila Munyao & Company Advocates.
  25. This court finds that the applicable section of the law is Order 9 Rule 9 of the Civil Procedure Rules, 2010 provides that:

“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.” In the case of James Ndonyu Njogu v Muriuki Macharia [2020] eKLR, the Court understood the meaning and import of Order 9, Rule 9 of the Civil Procedure Rules as follows: “It must be remembered that the provisions of Order 9 Rule 9 of the Civil Procedure Rules do



not impede the right of a party to be represented by an Advocate of his/her choice, but sets out the procedure to be adhered to when a party wants to change counsel after judgment has been delivered so as to avert any undercutting and or chaos. Thus a party so wishing to change his counsel must notify the Court and other parties.”

26. This court finds and holds that the applicant has followed the correct procedure, having sought leave of this Court to have his new duly appointed advocates come on record in place of firm of Sila Munyao & Company Advocates, therefore, the notice of motion dated 6th August, 2018 is hereby allowed. Each party to bear its own costs.

**DELIVERED, SIGNED AND DATED AT KERICHO THIS 31ST DAY OF JULY, 2025.**

.....

**J.K. SERGON**

**JUDGE**

In the Presence of:-

C/Assistant – Rutoh

No Appearance

