



REPUBLIC OF KENYA



KENYA LAW
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**Kirimi v Land Registrar Meru Central District & 2 others; Nkuubu
& 17 others (Interested Parties) (Environment & Land Petition
2 of 2019) [2023] KEELC 18105 (KLR) (14 June 2023) (Ruling)**

Neutral citation: [2023] KEELC 18105 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND PETITION 2 OF 2019**

CK YANO, J

JUNE 14, 2023

BETWEEN

DAVID KIRIMI PETITIONER

AND

LAND REGISTRAR MERU CENTRAL DISTRICT 1ST RESPONDENT

**THE ADJUDICATION OFFICER RUIRI RWARERA ADJUDICATION
SECTION 2ND RESPONDENT**

THE HONOURABLE ATTORNEY GENERAL 3RD RESPONDENT

AND

JANARO NKUUBU INTERESTED PARTY

ROSALIA MUKIRI INTERESTED PARTY

CICILIA KAMBURA MUKINDIA INTERESTED PARTY

CHARLES RUGOJI INTERESTED PARTY

JUSTUS M'IKIO M'MUTHURI INTERESTED PARTY

ROBERT M'MWONGO ATAALI INTERESTED PARTY

M'MINYORI KIRIAMEMBA INTERESTED PARTY

WILSON KINYUA MUTUA INTERESTED PARTY

AMON MUTHAMIA IGWETA INTERESTED PARTY

JUSTUS MBAABU MWITHIMBU INTERESTED PARTY

JANE KARAMBU IKAMATI INTERESTED PARTY

JEREMANO SAMAKI M'ARITHI INTERESTED PARTY



PETER MUGAMBI MUCHEKE INTERESTED PARTY
PETER KENNETH MUTHURI INTERESTED PARTY
DAVID KIRIMI MWITHIMBU INTERESTED PARTY
DANIEL KIBITI M’GACHARA INTERESTED PARTY
ABDI HASSAN GUYO INTERESTED PARTY
PHILIP KANGETHE INTERESTED PARTY

RULING

1. This is a ruling in respect of an objection raised by Ms Kiome learned counsel for the petitioner against the prosecution of the cross petition by Mr Gichunge advocate for the 4th respondent in the main petition and the 1st petitioner in the cross-petition on the grounds that Mr Gichunge prepared and witnessed an agreement dated September 10, 2014 between Cecilia Kambura Mukindia, the 3rd interested party herein and Maccu Motors Limited, the respondent and 1st cross petitioner, over the suit properties herein. Ms Kiome submitted that Mr Gichunge needs to be called as a witness and be cross examined on the said agreement which raises several issues.
2. Ms Kiome pointed out that the substantive counsel who filed the documents, including the said agreement was Mr Muchoma whom she had no objection with in prosecuting the matter and submitted that under Articles 10 and 159 of the *constitution*, justice must not only be done but be seen to be done.
3. Mr Maranya, learned counsel for the petitioner in petition No 3 of 2019 supported the objection and submitted that there is a conflict of interest on the part of Mr Gichunge.
4. Mr Mwenda Learned counsel for the Attorney General for the 1st, 2nd and 3rd respondents in petition No 2 of 2019 and the 3rd and 4th Respondents in the cross-petition also supported the objection. Likewise, Ms Kiyuki for the 2nd respondent in the cross petition, Ms Mwititi for the 5th, 10th, 11th 12th and 14th interested parties are in support of the objection raised.
5. In opposing the objection, Mr Gichunge submitted that pre-trial directions was done in the matter and no objection over his participation was raised. He pointed out that the said agreement was filed before the matter proceeded to hearing. That the matter is now part heard with the petitioner having closed his case. Mr Gichunge submitted that the objection is an afterthought and is intended to delay the finalization of the matter. He pointed out that the agreement was between his client and another party and does not concern the objectors. He urged the court to dismiss the objection.
6. Mr Muchomba supported Mr Gichunge and submitted that the matter is part heard and would be unfair to the 4th respondent to change counsel at this stage. That before they closed their case, the petitioner never indicated that they would be objecting to Mr Gichunge representing the 4th respondent.
7. I have considered the objection raised and the submissions made by the advocates for the parties. The issue for determination is whether there exists a conflict of interest in Mr. Gichunge representing the 4th respondent who is also the 1st petitioner in the cross petition, having prepared and witnessed the agreement dated September 10, 2014 between the said party and the 3rd interested party herein.



8. The principles that guide preliminary objection are very clear as was enunciated in the case of Mukisa Biscuits. The preliminary point must be on a point of law and not facts. This is because preliminary objection if upheld can dispose of the matter by it either being struck out or dismissed altogether. Therefore courts usually uphold preliminary objection only in the clear of the clearest of cases on a point of law.
9. Rule 8 of the *Advocates (Practice) Rules, 1966* provide as follows-;

“No advocate may appear as such before any court or tribunal in any matter in which he has reason to believe that he may be required as a witness to give evidence, whether verbally or by declaration or affidavit, and if, while appearing in any matter it becomes apparent that he will be required to give evidence whether verbally or by declaration or affidavit, he shall not continue to appear:

Provided that this rule does not prevent an advocate from giving evidence whether verbally or by declaration or affidavit on formal or non contentious matter of fact in any matter in which he acts or appears.”
10. I have perused the agreement for sale of land dated September 10, 2014. The same was between Cicilia Kambura Mukindia (as vendor) and Maccu Motors Limited (as purchaser). The property were the parcels of land known as Title numbers Ruiru/Rwarera/5089 and 5088 within Ruiru Rwarera Adjudication Section. These parcels are among the subject matter of these suits. The said agreement was witnessed by Mr Duncan Gichunge Muthuri advocate.
11. Since a dispute has arisen over the said properties, Mr Gichunge is likely to be called as a witness to shed light on the transaction that he did. This is notwithstanding the fact that the matter is part-heard. In my view, this is what Rule 8 of the Advocate (Practice) Rules above clearly provides.
12. In the result I find that the objection raised is merited and the same is upheld. The 4th respondent and the 1st petitioner in the cross-petition is at liberty to engage the services of another advocate other than Mr Gichunge in the cause.

DATED, SIGNED AND DELIVERED AT MERU THIS 14TH DAY OF JUNE 2023.

IN PRESENCE OF

Mr. Maranya for petitioners in pet 3/2020

Ms Gikundi Holding brief for Ms Kiome for petitioner in Pet 2/2019

Ms Mwiti for 5th, 10th, 11th, 12th, 13th & 14th interested parties in Pet 3/2020

Ms Kimotho holding brief for Gichunge Muthuri

Muchomba for 4th – 11th respondent in pet 2/2019 & cross petition in Pet 2/2019

Court assistant – V. Kiragu

C.K YANO

JUDGE

