



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**

**Succession Cause 189 of 1998**

**PAULINE TABUTANY KIPROP.....1<sup>ST</sup> APPLICANT**  
**SUSANA KIPROP.....2<sup>ND</sup> APPLICANT**  
**MIRIAM TERIKI.....3<sup>RD</sup> APPLICANT**  
**SALLY TERIKI.....4<sup>TH</sup> APPLICANT**

**VERSUS**

**JULIUS KIPROP.....RESPONDENT**

**RULING**

PAULINE TABUTANY KIPROP, SUSAN KIPROP, MIRIAM TERIKI and SALLY TERIKI who are represented by the firm of Kiplenge and Ogola Advocates and describe themselves in this cause as Applicants have sought under Section 47 of the Law of Succession Act and Rule 49 of the Probate and Administration Rules that the firm of Wambeyi Makomere & Co. Advocates and in particular Mr. Wambeyi Makomere be disqualified from acting for Julius Kiprop, the Respondent, in the application dated 2<sup>nd</sup> July 2008 and that the pleadings drawn and filed by that firm and in particular the replying affidavit sworn by the Respondent on 16<sup>th</sup> September 2008 be expunged from the court record. The application is based on the ground that while employed by the firm of M/S Kiplenge and Ogola Advocates, Mr. Wambeyi Makomere having attended to and advised the Applicants and extensively researched on this case, it is unethical for him to turn around and act for the Respondent. In support of the application, the first Applicant has sworn an affidavit and alleged that on several occasions Mr. Makomere attended to and advised her on this matter. She particularly remembers Mr. Makomere attending to her after he had been injured in an accident and had a plastered leg. In his replying affidavit, Mr. Makomere vehemently denied that allegation and stated that he never drafted but only signed the correspondence annexed to the first Applicant's affidavit on behalf of his then colleagues as was the usual practice in that firm.

The rule regarding advocate/client confidentiality imposes upon an advocate the duty not to communicate to any third party information which was confided to him as counsel and not use such information or his position as counsel to his client's detriment. This duty continues even after the relationship of advocate/client has ceased. There is, however, no general rule that counsel who has acted for a person in a matter either before or after litigation began can in no case act for the opposite side – Rahim Hasham & Co. Vs Salem [1932] 1 TLR 471. In order to disqualify an advocate from acting the test is whether that advocate is in possession of confidential information and that information is relevant and would be prejudicial to a former client who is an opposite party – Re a firm of solicitors [1995] 3 ALL ER 482.

In this case the allegations against Mr. Makomere are bare. The Applicants have not bothered to say what confidential information, if any, that they gave to Mr. Makomere which the latter may use to their detriment. They have taken objection to the replying affidavit without specifying what information, if any, is contained in that affidavit which was confided by them to Mr. Makomere.

Mr. Kurgat for the Applicants conceded that counsel in their firm signed correspondence for each other and that he is the one who drafted the letter dated 7<sup>th</sup> September 2007, a copy of which is annexed to the first Applicant's affidavit but was signed by Mr. Makomere. In the circumstances I am inclined to agree with Mr. Makomere that this Application is one of the Applicants' delaying tactics in this matter. There is clearly no confidential information given by the Applicants to Mr. Makomere to warrant his disqualification. Consequently I find no merit in this application and I accordingly dismiss it with costs.

DATED and delivered at Nakuru this 17<sup>th</sup> day of December, 2008.

**D. K. MARAGA**

**JUDGE**