



**Xavier v County Government of Narok & 5 others (Environment & Land
Case 18 of 2021) [2022] KEELC 14808 (KLR) (16 November 2022) (Ruling)**

Neutral citation: [2022] KEELC 14808 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
ENVIRONMENT & LAND CASE 18 OF 2021
EM WASHE, J
NOVEMBER 16, 2022
(FORMERLY NAROK ELC CASE NO.265 OF 2017)**

BETWEEN

LODI MASEYIEKI XAVIER APPLICANT

AND

COUNTY GOVERNMENT OF NAROK 1ST RESPONDENT

**MINISTRY OF LAND, HOUSING & URBAN DEVELOPMENT 2ND
RESPONDENT**

**DITSRICT LAND ADJUDICATION OFFICER-TRANSMARA 3RD
RESPONDENT**

LAND REGISTRAR, KILGORIS 4TH RESPONDENT

ATTORNEY GENERAL 5TH RESPONDENT

**BOARD OF GOVERNORS ENORETET PRIMARY SCHOOL 6TH
RESPONDENT**

RULING

1. The petitioner (hereinafter referred to as “the applicant”) filed a notice of motion application dated June 2, 2022 (hereinafter referred to as “the present application”) seeking for the following orders; -
 - i. That the trial judge Hon Justice Emmanuel Washe with all due respect be pleased to recuse and or disqualify himself from hearing and/or presiding over and or determination of this petition namely ELC No 18 of 2021 at Kilgoris Law Court.



- ii. That upon recusal and/or disqualification as prayed for hereinabove the court be pleased to direct that this file be transmitted to the principal judge of the Environment & Land Court or the honourable chief justice for directions and re-allocation.
 - iii. That costs of this application be in the event.
2. The present application is supported by the affidavit of the petitioner sworn on the June 2, 2022.
3. The summary of the grounds adduced in the supporting affidavit sworn by the petitioner are as follows;
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 - a. The applicant was surprised by the directions of the honourable judge directing him to surrender and/or deposit the title deed of the property known as Transmara/Enoosaeni/59 (hereinafter referred to as “the suit property”) to the Deputy Registrar, ELC Kilgoris within 14 days from the said date.
 - b. The applicant is aggrieved that the honourable judge made these directions hereinabove without any party in the suit making an application.
 - c. The applicant’s view is that this particular direction was based on a vested personal interest which is likely to prejudice this case.
 - d. The applicant further states that the honourable judge was merely swayed by the oral submissions of the 2nd -5th respondents counsel to the effect that the title deed to the suit property had already been cancelled but the applicants had refused to surrender the same to the 4th respondent.
 - e. In addition to the above issues, the applicant is also aggrieved by the honourable judge’s directions that the amended petition dated March 9, 2022 was struck out despite the fact that the court had granted leave on the December 15, 2021 for the applicant to file the same.
 - f. The applicant therefore states that the honourable judge’s deliberate omission to record the order of leave to file an amended petition was a clear case of misconduct and partiality that affects the fair administration of justice in this matter.
 - g. The applicant also states that on the May 18, 2022 when this matter was listed for hearing, the 4th respondent herein visited the honourable judge’s chamber at around 9.30 am for reasons unknown to him which also raise suspicion of impropriety/compromise on the part of the honourable judge.
 - h. Lastly, the applicant indicates that the honourable judge exhibited excessive temperate and high degree of anger which was inconsistent with an impartial judicial officer.
4. The present application was then served on the respondents.
5. The 2nd -5th respondents filed two pleading namely grounds of opposition dated June 21, 2022 and a replying affidavit sworn by Annette Kerubo Nyakora, advocate which is dated July 19, 2022 (hereinafter referred to as “the replying affidavit”).
6. In the replying affidavit, the 2nd -5th respondents outlined the events of what transpired in court on the December 15, 2021 and May 18, 2022 in her presence.
7. Paragraphs 8 and 9 of the replying affidavit discussed the events and proceedings which happened on the December 15, 2021.



8. The deponent of the replying affidavit stated that the applicant's suit was coming up for hearing.
9. However, the court realised that the applicant was not well versed with the petition itself and advised him to seek legal representation through an advocate.
10. The matter was therefore adjourned to March 2022 for further hearing.
11. The next time the matter came up for hearing on the May 18, 2022, the applicant had indeed procured the services of an advocate who was present in court ready for hearing.
12. Nevertheless, the applicant's advocate served the respondents with an amended petition which he wanted to prosecute on the material day.
13. The respondent counsel objected to the filing of the amended petition as there was no leave granted by the court and secondly, the amended petition had not been served in good time so that the respondent's would respond to the same.
14. The respondents further state in the paragraph 8 and 10 that the court on perusing the records on December 15, 2021, it noted that there was no leave granted to the petitioner to amend the petition and therefore struck out the same for being irregularly on record.
15. The respondents state that all the witnesses were in court on the material day and ready to proceed including the petitioner.
16. The court took a help break and, on its return, the petitioner indicated that he was not ready to proceed but failed to give any tangible reason to support the adjournment.
17. The court therefore directed that the matter would be adjourned but on condition that the applicant would deposit the title deed of the suit property in court for safe keeping until the matter is heard and determined.
18. It is at this point that the applicant indicated his intention to file this present application seeking for recusal of the honourable judge.
19. The respondents have submitted that the directions of the honourable judge that the title deed of the suit property be deposited in court was proper so that there is fair playing ground for both parties as the applicant was delaying the same as a tactic not to surrender back the already cancelled title.
20. On the issue of anger, the respondents stated that the honourable judge exhibited fairness and maintained decorum as expected of a judicial officer.
21. Instead, it is the applicant counsel that exhibited anger especially to the honourable judge's directions that the title deed of the suit property be deposited with the Deputy Registrar, ELC court pending the hearing and determination of the suit.
22. Lastly, the respondent's advocate has raised a legal issue that the entire application is fatally defective because the advocate who signed the same was licenced to practice under the name Karario Marwa & Company, Advocates and not Mudeyi Okumu & Company, Advocates.
23. In conclusion therefore, the respondents sought the court to dismiss the present application with costs.
24. The applicants then filed their submissions on the July 15, 2022 and the respondents filed theirs on the July 21, 2022.
25. The court having perused the present application, the replying affidavit and the submissions filed by the parties herein, the following issues arise for determination.



Issue No. 1- Is the present application drawn by a duly registered law firm?

Issue No. 2- Has the applicant herein satisfied the principles and/or conditions of recusal?

Issue No.3- Is the applicant entitled to the prayers sought in the present application.

Issue.4- Who bears the costs of the present application.

Analysis & Determination

Issue No.1- Is the present application drawn by a duly registered law firm?

26. The respondents in paragraph 17 and 18 contest the filing of the present application by the purported law firm of Mudeyi Okumu And Company, Advocates.
27. The respondents submission is that the Advocate Mudeyi Albert Okumu is authorised to practice as an Associate of Kerario Marwa & Company Advocates.
28. In support of this allegation, the respondents have placed before the court two annextures and/or documents.
29. The first document is an email to the Law Society of Kenya titled request for information -Mideyi Okumu And Company, Advocates.
30. In this email, the respondents are requesting to establish whether or not the firm of Mudeyi Okumu & Company Advocates which is on record for the petitioner is duly recognised by the Law Society Of Kenya.
31. The second document is a letter dated June 29, 2021 from the Law Society of Kenya to the respondents titled Mudeyi Albert Okumu, Advocate.
32. The contents of this letter state that the Mudeyi Albeet Okumu, advocate is a duly licensed advocate for the year 2022 who practices as an associate of the firm known as Kerario Marwa & Company, Advocates.
33. The net-effect of the respondent's submissions and the annexature placed before the court was that the firm of Mudeyi Okumu & Company, Advocates does not exist under the [Registration of Business Names Act](#), cap 499 and cannot file any lawful pleadings before any court of law.
34. The court during the writing of this ruling noted that this allegation against the firm of Mudeyi Okumu & Company, Advocates had been raised through a replying affidavit dated September 19, 2022 and filed in court on the September 20, 2022.
35. The replying affidavit filed on September 20, 2022 had been filed after the applicant's counsel had filed their submissions on the September 15, 2022.
36. The court was therefore of the view that the applicant's advocate ought to be given an opportunity to comment on the respondent's challenge to the legality of the firm known as Mudeyi Okumu & Company, Advocates.
37. The applicant's advocates was granted leave on the October 10, 2022 to file a further affidavit to answer the respondent's submissions on the non-existence of the firm known as Mudeyi Okumu & Company, Advocates.
38. As directed, the applicant's advocate filed a further reply to the respondent's replying affidavit dated October 31, 2022 on the November 1, 2022.



39. The court having accorded the applicant's advocate an opportunity to comment on the issue can now proceed to make its decision.
40. The point of departure in the determination of this issue is the notice of appointment of advocates filed on the March 9, 2022 pronouncing the participation of Mudeyi Okumu & Company Advocates.
41. The notice of appointments by the applicant's advocate dated March 9, 2022 read as follows in part; -
"Take notice that the petitioner herein has today appointed the firm of M/s Mudeyi Okumu & Company, Advocates....."
42. According to this notice of appointment dated March 9, 2022, it was the firm of Mudeyi Okumu & Company, Advocates that had been retained to represent the petitioner herein.
43. It is common knowledge that the registration of professional persons seeking to operate professional offices and/or entitles is guided by the [Registration of Business Names Act](#), cap 499.
44. In the preamble of the [Registration of Business Names Act](#), cap 499, the Act provides as follows; -
"An Act of Parliament to make provision for the registrations of firms, individuals and corporations carrying on business under a business name, and for matters incidental thereto and connected therewith."
45. Under the interpretation part of the [Registration of Business Names Act](#), cap 499, the description of a firm is provided in the following manner; -
"means an unincorporated body of two or more individuals, or of one or more individuals and one or more corporations, who or which have entered into a partnership with one another with a view to carry on business for profit."
46. A business name is also described as follows; -
"means the name or style under which any business is carried on, whether in partnership or otherwise."
47. Lastly, the word "business" has been described as; -
"includes every trade, occupation or profession"
48. Section 4 of the [Registration of Business Names Act](#), cap 499 makes it mandatory that all firms, individuals and/or corporates must be registered with the registrar appointed under section 3 of the Act.
49. Section 14 of the [Registration of Business Names Act](#), cap 499 provides that each and every firm shall be issued with a certificate of registration to show the full name or names of the partners or individuals of such a firm.
50. Referring to the notice of appointment dated March 9, 2022, it is expressly indicated on the same that a firm known as Mudeyi Okumu & Company, Advocates was coming on record to act for the petitioner herein.



51. As a requirement to section 14 of the [Registration of Business Names Act](#), cap 499, this firm of Mudeyi Okumu & Company, Advocates should be a lawful entity possessing a certificate of registration by the registrar of business names.
52. This was in the court's view a simple issue which the firm of Mudeyi Okumu & Company, Advocates should have resolved by producing their certificate of registration issued under section 14 of the [Registration of Business Names Act](#), cap 499.
53. Unfortunately, even after the court deferring its ruling and according the petitioner's advocate time to produce the certificate of registration for the firm of Mudeyi Okumu & Company, Advocates, the further reply to the respondent's replying affidavit dated October 31, 2022 filed by the petitioner tactfully and intentionally failed to place the same before court.
54. It is therefore clear in the mind of this court that there is no certificate of registration in the name of Mudeyi Okumu & Company, Advocates which has been issued by the registrar of business names and therefore the firm of Mudeyi Okumu & Company, Advocates as indicated in the notice of appointment dated March 9, 2022 same does not exist in law.
55. The petitioner's advocates attempt to explain the omission of the certificate of registration for the firm of Mudeyi Okumu & Company, Advocates using an article written by Charles Wamae, Damaris Muia and Ivy Mburu titled "whether an advocate in their individual capacity can open, operate and manage a bank account or accounts for purposes of conducting their practice" has not in any way tackled the issue of whether or not the firm of Mudeyi Okumu & Company, Advocates has been registered and issued with a certificate of registration in line with section 14 of the [Registration of Business Names Act](#), cap 499.
56. In conclusion therefore, the court view is that the purported firm of Mudeyi Okumu & Company, Advocates is not a registered and/or legal firm in law capable of preparing, filing and/or representing any purported client as a law firm in the Republic of Kenya.

Conclusion

57. The court having made a finding that the firm of Mudeyi Okumu & Company, Advocates does not exist in law, then the entire application dated June 2, 2022 is fatally defective having been prepared and filed by a non-existent firm and there is no need to determine the other prayers and/or issues raised in the said application.
58. The court therefore hereby makes the following orders in regard to the application dated June 2, 2022; -
 1. The notice of appointment dated March 9, 2022 and thereafter the application dated June 2, 2022 together with all other pleadings filed by the firm of Mudeyi Okumu & Company, Advocates be and are hereby struck out forthwith.
 2. The respondent to the application dated March 9, 2022 is hereby awarded costs of this application to be paid by the advocate known as Albert Okumu Mudeyi holder of the practising certificate No. LSK/2022/06005 and LSK admission number P.105/3687/98 personally within forty-five (45) days from the date of this ruling.
 3. The petitioner herein is granted leave of thirty (30) days from the date of this ruling to take the necessary steps in terms of the legal representation in this suit.

DATED, SIGNED & DELIVERED VIRTUALLY IN KILGORIS ELC COURT ON 16TH NOVEMBER, 2022.



EMMANUEL.M.WASHE

JUDGE

IN THE PRESENCE OF:

COURT ASSISTANT: LEKAKENY

ADVOCATE FOR THE PETITIONER/APPLICANT: MUDEYI

ADVOCATE FOR THE DEFENDANT/RESPONDENT: NYAKORA=

