



**Ngugi v Kamau & another (Environment & Land Case
15B of 2024) [2025] KEELC 3600 (KLR) (6 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3600 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE 15B OF 2024**

JM ONYANGO, J

MAY 6, 2025

BETWEEN

SUSAN NGINA NGUGI PLAINTIFF

AND

AGNES WAIRIMU KAMAU 1ST DEFENDANT

EVANSON KAMAU NGUGI 2ND DEFENDANT

RULING

1. What is before me for consideration is the Notice of Motion dated 27th November 2024 brought under the provisions of Section 1A, 1B, 3A and 63(e) of the *Civil Procedure Act*, Order 51 rule 1 of the Civil Procedure Rules and Rule 6 of the LSK Code of Ethics and Conduct for Advocates (2016) seeking the following orders:
 1. Spent
 2. THAT this honourable court be pleased to order that Patrick Muchiri Gachara and the firm of Muchiri Gachara & Company Advocates appearing for the Defendants/Respondents be and are hereby disqualified and to cease act or continue to appear for the Defendants/Respondents herein;
 3. THAT the pleadings drawn and/or prepared by Patrick Muchiri Gachara and the said firm Messrs. Muchiri Gachara & Co. Advocates in respect to this matter be struck out from the face of the record before this honourable court.
 4. THAT the costs of this Application be awarded.
 2. The application is premised on the grounds on the face of it and supported by the Plaintiff/Applicant's Affidavit sworn on 27th November 2024. The Applicant avers that Patrick Muchiri Gachara, Advocate (the Respondents' Advocate), was actively involved in the funeral



and burial arrangements of her late mother and was even a member of the burial committee. She further avers that the Respondents' Advocate is married to the 2nd Respondent's sister, one Susan Wanja and that his brother is a caretaker at the Applicant's property, hence he is privy to all the affairs of the Applicant's family. She adds that her brother, the 1st Respondent, is married to the 2nd Respondent who is a sister-in-law to Patrick Muchiri Gachara, Advocate. She contends that the relationship between the said Advocate and the 2nd Respondent places her at a disadvantage in relation to all the suits where the Advocate represents the Respondents.

3. It is her claim that the information obtained by the Respondents during their thirty-year marriage is being used to her detriment. She further claims that the Respondents' Advocate is using the information he obtained while representing the Respondents in the Succession matter relating to the Applicant's late mother's Estate, to her detriment.
4. She deposes that the Respondents' Advocate has a conflict of interest in the suit given that some of his relatives are tenants on the suit property. She maintains that she will suffer prejudice if the Respondents' Advocate continues representing them. She adds that whilst it is a constitutional right for each party to be represented by counsel of their choice, that right ought not to encroach on her right to a fair hearing. She further states that this court ought to take note that the Advocate has a duty not only to himself or his clients but also to the opposing party. She urged the court to allow the application as prayed.
5. In opposing the application, the 1st Defendant/Respondent filed a Replying Affidavit sworn by himself on 16th December 2024, where he maintains that the application is hopelessly misconceived, incompetent, malicious, frivolous, vexatious and a gross abuse of the court process. He adds that the application lacks merit and is devoid of any evidence of misconduct, malice or any form of wrongdoing on the part of Patrick Muchiri Gachara, Advocate.
6. He contends that all allegations made by the Applicant are baseless and do not meet the threshold for recusal or disqualification of counsel of an opposing party. He further contends that he has a constitutional right to counsel of his choice and that the Applicant ought not to dictate who should represent him or not. He adds that the Applicant is concerned about some undisclosed information being revealed to the court because she is apprehensive that if the same is revealed, her case will collapse. He maintains that neither he nor his Advocate have breached any of the rules on discovery of evidence.
7. On the allegation that the Respondent's Advocate was part of the funeral committee, he stated that the same had not been proved and that even so, that was not a reason for the Advocate to disqualify himself from acting for him. He denies the allegation that his Advocate was getting information from relatives or that the Advocate's relatives are tenants on the suit property. He further denies that his Advocate has a personal interest in the affairs of their deceased mother's estate. He adds that the fact that the Advocate represents them in other matters between the same parties is not a basis for his disqualification. He urged the court to dismiss the application with costs.
8. The application was canvassed by way of written submissions. The Applicant filed their submissions dated 27th February 2025, and the Respondents filed theirs dated 10th March 2025.

Analysis and Determination

9. Having considered the issues raised in the application, the replying affidavit and the rival submissions, the main issue for determination is whether the application is merited.



10. The Applicant has sought an order for recusal of the Respondents' Advocate for reasons that: (i) the Advocate was actively involved in the funeral and burial arrangements of her late mother and was even a member of the burial committee; (ii) the Respondents' Advocate is married to the 2nd Respondent's sister; (iii) the Advocate's brother is a caretaker at the Applicant's property, hence he is privy to all the affairs of the Applicant's family; and (iv) the 2nd Respondent is a sister-in-law to the Advocate. She further claims that the Respondents' Advocate is using the information he obtained while representing the Respondents in a Succession matter relating to the Applicant's late mother's Estate, to her detriment. She adds that the Respondents' Advocate has a conflict of interest in the suit, given that some of his relatives are tenants on the suit property.
11. The Law Society Code of Standards of Professional Practice and Ethical Conduct, 2017, defines conflict of interest under paragraph 93 as follows:

“A conflicting interest is an interest which gives rise to substantial risk that the Advocate's representation of the client will be materially and adversely affected by the Advocate's own interests or by the Advocate's duties to another current client, former client or a third person.”
12. The court in the case of *Serve in Love Africa (Sila) Trust vs David Kipsang Kipyego & 7 Others* [2017]eKLR described conflict of interest as

“A conflict of interest may be described also as a conflict of duties or a conflict between interests or as a conflict between interest and duty. All these ways pick up different aspects of the three main ways in which the problem can arise. To act when you have a conflict of interest involves breaching your fiduciary duty to your client or former client. This is the basis of the conflict of interest problem. The four elements of the fiduciary duty are

 - a. The duty of loyalty to the client.
 - b. The duty of confidentiality.
 - c. The duty to disclose to the client or put at the client's disposal all information within your knowledge that is relevant in order to act in the client's best interests.
 - d. The duty not to put your own or anyone else's interests before those of the client.”
13. Paragraph 96, on the other hand, describes instances in which a conflict of interest might arise. They include the following:
 - a. Where the interest of one client are directly adverse to those of another client being represented by the Advocate or the firm, for instance, in situations where the representation involves the assertion of a claim by one client against another client.
 - b. Where the nature or scope of representation of one client will be materially limited by the Advocate's responsibilities to another client, a former client, a third person or by the personal interests of the Advocate.



- c. Where in the course of representing a client there is a risk of using, wittingly or unwittingly, information obtained from a current or former client to the disadvantage of that other client or former client.”

14. From the above provisions, it is clear that a conflict of interest may arise when the Advocate’s representation of the client will be materially and adversely affected by the Advocate’s own interests or by the Advocate’s duties to another current client, former client or a third person. In the instant case, the Plaintiff/Applicant is not Patrick Muchiri Gachara, Advocate’s client, and neither has she ever been his client. Therefore, he does not owe her any duty afforded in an advocate-client relationship. Article 50 (2) (g) of *the Constitution* of Kenya 2010 states that every accused person has the right to a fair trial, which includes the right to be represented by an advocate of their choice. This right extends to civil matters.

15. This court finds that none of the reasons given by the Applicant amount to a conflict of interest on the part of Patrick Muchiri Gathara, Advocate. Consequently, I find that the application dated November 22, 2024 lacks merit. It is hereby dismissed. The Applicant shall bear the costs of the application.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 6TH DAY OF MAY 2025.

J. M ONYANGO

JUDGE

