



**Dwellings and Spaces Limited v Mwaniki alias Mirriam Nyawira Mwaniki  
(Sued in her personal capacity as the Legal Representative to the Estate of  
Stephen Mwaniki Wairera (Deceased) & 3 others (Environment & Land  
Case E025 of 2024) [2025] KEELC 4981 (KLR) (4 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 4981 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYERI  
ENVIRONMENT & LAND CASE E025 OF 2024**

**JO OLOLA, J**

**JULY 4, 2025**

**BETWEEN**

**DWELLINGS AND SPACES LIMITED ..... PLAINTIFF**

**AND**

**MILLIAM NYAWIRA MWANIKI ALIAS MIRRIAM NYAWIRA  
MWANIKI (SUED IN HER PERSONAL CAPACITY AS THE LEGAL  
REPRESENTATIVE TO THE ESTATE OF STEPHEN MWANIKI WAIRERA  
(DECEASED) ..... 1<sup>ST</sup> DEFENDANT**

**JORAM WACHIRA MWANIKI NEHEMIAH GITONGA MWANIKI .... 2<sup>ND</sup>  
DEFENDANT**

**SARAH NJERI MWANIKI ..... 3<sup>RD</sup> DEFENDANT**

**ROSEMARY WAMBUI MWANIKI ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. By the Notice of Motion dated 18<sup>th</sup> October 2024, Dwellings and Space Ltd (the Plaintiffs) prays for the following:
  1. That the Honourable Court be pleased to injunct, restrain and /or disqualify Gichuki Kingara Advocate or any Advocate practicing under the Firm of Gichuki Kingara & Co. Advocates from acting for and /or representing the Defendants/Respondents in this suit or any other litigation or proceedings between the parties regarding the suit property;



2. That the Honourable Court be pleased to strike out the Memorandum of Appearance dated 16<sup>th</sup> October, 2024 and any other pleadings filed by Gichuki Kingara Advocate or any other Advocate practicing in the Firm of Gichuki Kingara & Co. Advocates;
  3. That the costs of this Application be provided for.
2. The Application is supported by two Affidavits sworn by Dr. Patrick Mbuthia Mwangi, a director of the Applicant and is premised on the grounds.
    - i. That the Firm of Gichuki King'ara Advocates was retained as the transactional advocate by both the Defendants/ Respondents (as Vendors) and the Plaintiff/Applicant (as Purchaser) in the transaction that is the subject matter of this suit;
    - ii. That the said Firm's bid to represent the Defendants will create a serious conflict of interest thus going against laid out guidelines on expected standards of professional conduct by advocates;
    - iii. That there is a high likelihood that the said Firm of Advocates will divulge confidential information shared by the Plaintiff in the course of the Advocate-Client relationship thus abrogating the Plaintiff's absolute and non-derogable right to a fair trial;
    - iv. That during the course of its retention by the Plaintiff, the said Firm of Advocates breached its fiduciary duty leading to the impasse that was followed by this suit and as such the said advocate will be summoned as a witness; and
    - v. That each party has a right to counsel of his/her choice but this right cannot be exercised at the expense of the Plaintiff's absolute right to fair trial.
  3. All the five (5) Defendants are opposed to the application. Through their individual Replying Affidavits all sworn on 12<sup>th</sup> November, 2024, they aver that Mr. Peter King'ara who operates in the Firm name and style of Gichuki King'ara & Co. Advocates has been their trusted family lawyer for a long period of time. They aver that the sale agreement dated 26<sup>th</sup> August 2019, was between the Plaintiff and the Defendants and that neither Mr. Peter King'ara nor any associate from the Law Firm was a party to the drawing or witnessed the execution of the said Agreement. As a result, it is the Defendant's case that there was no contravention of Section 9 of the Advocates Act, Cap 216 of the Laws of Kenya.
  4. The Defendants further aver that no summons have been issued to the Law Firm or any associates therein to appear as witnesses in the suit and that the Plaintiff has not demonstrated any prejudice it stands to suffer if the Law Firm continues to represent the Defendants herein.
  5. I have carefully perused and considered both the application and the response thereto. I have similarly perused and considered the submissions and authorities placed before me by the Learned Advocates representing the parties.
  6. The Plaintiff herein has moved the court to injunct, restrain and/or disqualify Gichuki King'ara Advocate or any other advocate practising under the Law Firm known as Gichuki King'ara & Co. Advocates from acting for and/or representing the Defendants herein in this suit or any other litigation or proceedings between the parties regarding the suit property. It has also asked the court to strike out the Memorandum of Appearance and or any other pleadings filed by the said Law Firm or any other Advocate practising therein.
  7. It is the Plaintiff's case that the Firm of Gichuki King'ara & Co. Advocates was retained as the transactional advocate by both the Defendants and the Plaintiffs in the sale transaction which is the



subject matter of this suit. The Plaintiff avers that arising from the retainer, there is a high likelihood that the said Firm of Advocates will divulge confidential information shared by the Plaintiff in the course of the Advocate-Client relationship thereby abrogating the Plaintiff's right to a fair trial.

8. From the material placed before the court, there was no dispute that the Plaintiff entered into a Sale Agreement with the Defendants on 26<sup>th</sup> August, 2019 for the sale of a portion of Land Reference No. 6390/6 situated in Nyeri along the Nyeri-Mweiga road. That agreement was drawn by a Law Firm known as Gathumbi & Company Advocates.
9. It was apparent that the terms of the said Agreement were not fulfilled and that subsequently in August, 2024 there was an attempt to amend the terms thereof. In that respect a Novation and Further Agreement was prepared. A copy of the Novation Agreement which was never executed by the Defendants indicates that it was "drawn by Gichuki King'ara & Co. Advocates." It is on that basis that the Plaintiff urges the Court to restrain the Law firm from representing the Defendants herein.
10. Rule 8 of the Advocates (Practice) Rules, 1966, pursuant to which the application is brought provides 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 as a witness 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 matters of fact in any matter in which he acts or appears."

11. As it were, there is no general rule that an Advocate cannot act for one party in a matter and then act for the opposite party in subsequent litigation. The test which has been laid down in authorities applied is whether real mischief or real prejudice will in all human probability result.
12. In the case of Murgor & Murgor Advocates –vs- Kenya Pipeline Co. Ltd. (2021) eKLR, it was held as follows:

“(i) The basis upon which a Court disqualifies an Advocate from acting arises from the need to protect the interests of the administration of justice. Whereas it is understood that choice of Counsel is an entitlement of a party, such Counsel must always bear in mind that he/she becomes an officer of the Court and as such owes an allegiance to a higher cause (justice and truth) than serving the interests of the client;

(ii) Disqualification of an Advocate is only desirable in contentious matters and where there is an Advocate-Client relationship;

(iii) It must be apparent that the Advocate sought to be disqualified will be required as a witness to give evidence in the matter;

(iv) It is desirable that when the principle of confidentiality in an Advocate/Client fiduciary relationship will be prejudiced or where there is a possibility of real conflict of interest, then an Advocate sought to be disqualified ceases to appear in the matter;



- (v) The fact that an Advocate acted for a litigant does not, per se, lead to a situation of conflict of interest;
- (vi) Conflict of interest is an issue of fact which must be proved by way of evidence; and
- (vii) It is not a requirement that in a situation where a firm of Advocates acted for the opposite party all the Advocates in the firm be disqualified from the matter. In such an instance, only the Advocates who are in possession of confidential information relevant to the matters in issue before Court or Tribunal may be called upon to cease from appearing in the matter.”

13. Considering a similar matter in *Gurdian Bank Limited –vs- Sonal Holdings (K) Ltd & 2 Others* (2014) eKLR, Gikonyo J. stated as follows:

“What I need to state is that, in applications for disqualification of a legal counsel, a court of law is not to engage a cursory look at the argument that “these advocates participated in the drawing and attestation of the Deeds in dispute” as that kind of approach may create false feeling and dilemmas; for it looks very powerful in appearance and quite attractive that those advocates should be disqualified from acting in the proceedings. It is even more intuitively convincing when the applicant says, “I intend to call them as witnesses”. What the court is supposed to do is to thrust the essential core of the grounds advanced for disqualification, look at the real issues in dispute, the facts of the case and place all that on the scale of the threshold of the law applicable. In the process, courts of law must invariably eliminate any possibility that the arguments for disqualification may have subordinated important factual and legal vitalities in the transactions in question while inflating generalized individual desires to prevent a party from benefiting from a counsel who is supposedly should be “their counsel” in the conveyancing transaction...”

- 14. Arising from the above cited decisions it is apparent that the mere fact that an Advocate acted for both parties in a transaction is not in itself a bar to the said Advocate from representing either of the parties in litigation. In the matter before me, it was clear that the Sale Agreement executed by both parties on 26<sup>th</sup> August, 2019 was drawn by a different Law Firm.
- 15. It was evident from the Plaintiff’s pleadings herein that having failed to fully comply with the terms of the said Agreement, the parties made an attempt to enter into a Novation and Further Agreement which they agreed would be drawn by the Defendants’ Advocates. The Novation Agreement was however neither executed by the Defendants nor was it ever witnessed by the said Gichuki King’ara Advocate or any of his Associates.
- 16. In the premises herein I was not persuaded that the Plaintiff had demonstrated any or any sufficient reason to disqualify the said Gichuki King’ara & Co. Advocates.
- 17. Accordingly, I find no merit in the Motion dated October 18, 2024. The same is dismissed with costs to the Defendants.

**RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT MOMBASA THIS 4<sup>TH</sup> DAY OF JULY, 2025**

**J.O. OLOLA**

**JUDGE**



In the presence of:

- a. Ms. Firdaus Court Assistant.
- b. Ms. Kimani holding brief for Ndichu for the Plaintiff/Applicant
- c. Ms. Wachuka holding brief for King'ara for the Defendant/Respondent

