



**In re Estate of Maria Mukiri Muteke (Succession Cause
6 of 2017) [2025] KEHC 1679 (KLR) (6 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1679 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NANYUKI
SUCCESSION CAUSE 6 OF 2017
AK NDUNG’U, J
FEBRUARY 6, 2025
IN THE MATTER OF THE ESTATE OF MARIA MUKIRI MUTEKE**

BETWEEN

JANE MURUGI RIARI APPLICANT

AND

JANE WAIRIMU RESPONDENT

RULING

1. The Applicant in this case, Jane Murugi Riari seeks by notice of motion dated 13/05/2024 for orders that;
 - i. Miss Rosemary Nyawira Wachira, her partners, servants or agents be barred from representing the Respondent in this suit.
 - ii. Miss Rosemary Nyawira Wachira be barred from holding brief for the advocate on record for the Respondent in this suit or acting in any other manner as instructed by the advocate on record.
 - iii. Costs of this application be provided for.
2. The application is supported by an affidavit of the Applicant herein who averred that she was issued with the letters of administration for the deceased’s estate but the Respondent herein filed for revocation of grant and as a result, she went to Chweya & Associates to seek legal representation and she was directed to see Miss Nyawira Wachira, advocate. They met and she gave her all the information regarding the suit and left her with all the documents but they could not agree on fees so she opted to represent herself. That the said Miss Rosemary Wachira has represented the Respondent in this suit and on 07/02/2024 after the suit was mentioned, she informed her that the Judge had instructed the parties to have a meeting to see if they can settle the matter out of court. The meeting was held at her



office and she was not fair and since she had approached her on this matter, there is a conflict of interest and she believes that the information she has is giving an unfair advantage to the Respondent and if she continues representing the Respondent, she stands to suffer irreparable damage.

3. In response, Miss Wachira Nyawira Advocate filed a replying affidavit dated 15/05/2024. She deposed that she has never had a meeting with the Applicant save for 07/02/2024 nor offered any legal advice to her over the suit herein. That indeed she was an associate at Chweya Advocates and it was a policy for a client to pay a consultation fee of Kshs.1000 and the Applicant has not proffered any proof of payment to proof existence of advocate-client relationship. Further, no dates have been given to ascertain if at all she was at the offices of Chweya Associates. The Applicant has not also revealed any privileged information that she revealed that she may feel may be prejudicial to her case if they indeed met and the Respondent has a right to legal representation of her choice. That on 07/02/2024 parties appeared in court and upon interrogating parties, this court advised parties and impressed on her as an officer of the court to see if she could have the parties agree on an out of court settlement. That she invited the parties to her chambers and advised them to go to the chief's office to see if they could reach a settlement as evidenced by the chief's letter attached.
4. Parties were ordered to canvass the application by way of written submissions.
5. The advocate filed her submissions and argued that pursuant to Section 134 (i) of the *Evidence Act* for information to be qualified as privileged and for an advocate to be disqualified from representing a client, there must be a relationship between the party alleging privilege known as employment. That no advocate-client relationship existed between the Applicant and her since she has not demonstrated payment of fees or even consultation fee to infer advocate-client relationship. Further, from her affidavit, no advise was rendered to infer advocate-client relationship. That it is unclear as to what information was divulged by the Applicant other than handing over the summons for revocation of grant. That mere mention of stating that all information was divulged without disclosing what information was a ruse being used to deny the Respondents of her constitutionally guaranteed rights. Reliance as placed on the case of *Aden Ibrahim Mohamed & 6 others vs County Assembly of Wajir & others, Governor of Wajir County Mohammed Abdi Mohammud & 3 others (Interested parties)* [2021] eKLR where the court stated that there is need to disclose the nature of information in issue.
6. I have considered the application, the response and the submissions filed herein. The Applicant seeks disqualification of the Respondent's advocate claiming conflict of interest on account that she met with the Respondent's advocate where she gave her information regarding her case and even left her documents with her so that she can go through them and advise her accordingly. She feels that the information that the counsel has might be used against her hence prejudicing her case as against the Respondent.
7. The *Law Society of Kenya Code of Standards of Professional Practice and Ethical Conduct* defines conflict of interest in Rule 6 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.”
8. Rule 6 paragraph 96 provides for situations in which a conflict of interest might arise which include:
 - “(a) Where the interests 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."

9. In *Charles Gitonga Kariuki v Akuisi Farmers Co. Ltd* [2007] eKLR the Court dealt with the subject of conflict of interest as follows: -

"It is trite law that an advocate cannot act for and against a client in a suit or in subsequent suits where he could utilize the information that he acquired in the cause of his work as an advocate to the detriment of that client. In *Uhuru Highway Development Ltd -vs- Central Bank of Kenya* [2002] 2 E. A 654 at pg 661, the Court of Appeal held that an advocate would not be allowed to act against a client where he could consciously or unconsciously or even inadvertently use the confidential information acquired when he acted for such a client to his detriment. The court held, that where it was established that such a client would suffer prejudice then the court would have no alternative but to order that such an advocate ceases to act for the opposing party. An applicant who is seeking the disqualification of an advocate from acting for the opposing party in the circumstances contemplated above, must establish the existence of such advocate relationship that could lead to such an advocate to be in possession of confidential information which he could use to the detriment of the client seeking the disqualification of an advocate."(emphasis added)

10. The Applicant claims that the Respondent's advocate is in possession of confidential information regarding her side of the story but has not revealed such information that the counsel might use adversely against her. In *Re a firm of Solicitors* [1995] 3 ALL 482, at page 489 it was stated thus: -

".... on the issue whether the solicitor is possessed of relevant information, it is in general not sufficient for the client to make general allegation that the solicitor is in possession of relevant confidential information if this is in issue: some particularity as to the confidential information is required..."

11. It therefore follows that the Applicant has not demonstrated that there existed a client-advocate relationship and has not pleaded in specificity the relevant information made to the advocate regarding her case.

12. The court in *Yunes Boera Nyamwange & 2 others v Rhoda Mongina Ondoro & 5 others* [2017] eKLR held that;

"The mere fact that the applicants had contacted the firm of Bosire Gichana & Co. Advocates with a view to instructing them to act for them without proof that the applicants had passed information to them to enable them to act in my view is not sufficient and does not meet the threshold to call for disqualification of Mr. Bosire Gichana advocate from acting for the plaintiffs. An advocate cannot be barred from representing a party on flimsy grounds and/or on some unsubstantiated grounds. The applicants have failed to demonstrate that they



passed to Mr. Bosire Gichana advocate any information on the subject matter which the advocate could use to their prejudice and/or detriment and for the benefit of the plaintiffs.”

13. On the material before court, no basis is laid why the Advocate on representing the Respondent should be barred from representing her. The application before court lacks merit and is dismissed.

DATED SIGNED AND DELIVERED VIRTUALLY THIS 6TH DAY OF FEBRUARY 2025.

A.K.NDUNG’U

JUDGE

