



REPUBLIC OF KENYA



KENYA LAW
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**Larsen v Mbugua (Civil Case 282 of 2018)
[2025] KEHC 8327 (KLR) (Civ) (12 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8327 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL CASE 282 OF 2018

JN MULWA, J

JUNE 12, 2025

BETWEEN

CHRISTIAN LAU LARSEN PLAINTIFF

AND

SAMUEL KURIA MBUGUA DEFENDANT

RULING

1. Samuel Kuria Mbugua (hereafter the Applicant) by his motion dated 25/8/2024 filed against the Christian Lau Larsen (hereafter the Respondent) and brought pursuant to Section 3A of the [Civil Procedure Act](#) (CPA) and Order 51 Rule 1 of the Civil Procedure Rules (CPR) seeks inter alia: -
 - a. That Kaplan and Stratton Advocates be pleased to recuse themselves from representing Mr. Christian Lau Larsen, the Applicant.
2. The motion is supported by an affidavit sworn by Samuel Kuria Mbugua dated 25/08/2024 whose gist is that the firm of Kaplan and Stratton Advocates defied Court orders over the Respondent's motion on account of being privy to the suit meanwhile having illegally and fraudulently appointed the Respondent as a director of Tri Square Ltd through its affiliated company known as Quadrant Secretaries; That the said firm in collusion with the Respondent forged documents showing the resignation of the Respondent as director of Tri Square Ltd and falsely submitted the same in another suit filed by the Applicant being Kiambu High Court Case No. 9 OF 2018. He goes on to depose that the said firm of advocates were further complicit with its client in hacking computers at the Registrar of Companies by uploading the Respondent's name and that of Quadrant Secretaries as secretaries for Tri Square Ltd; That the firm of advocates was to assist the Respondent in his attempt to sell land on behalf of Tri Square and later deposit the proceeds of sale in the Respondent's account. He concludes by deposing that as a result of the firms' complicity and actions, the Advocates Complaints Commission recommended that the said firm be reported to the Directorate of Criminal Investigations and the



Advocates Disciplinary Committee for their actions in contravention of Section 60 of the Advocates Act.

3. The Respondent, Christian Lau Larsen, opposes the motion by way of a replying affidavit dated 03/02/2025, arguing that the Applicant has on occasion prevented the matter from being considered and determined on merit by filing interlocutory applications; That despite the parties herein litigating before other Courts, he was at all material times represented by the firm of Kaplan and Stratton Advocates, to which the Applicant did not at any time raise an objection to the said representation. He further deposes to having a constitutional right to legal representation of his choice and that the Applicant has failed to demonstrate any perceivable conflict of interest of Kaplan and Stratton Advocates representing him. He concludes by stating that the allegations raised by the Applicant are spurious, baseless and an abuse of the Court process therefore it is in the interest of justice that the motion be dismissed with costs.

4. Directions were taken on disposal of the Applicant's motion by way of the oral arguments, of which this Court has duly considered and thus postulates that the issue for determination concern:-

Whether the firm of Kaplan and Stratton ought to be recused and or barred from representing the Plaintiff/Respondent?

5. Having considered the rival affidavit material and oral arguments, the Court gathers therefrom that the Applicant advances a flurry of allegations as against the firm of Kaplan and Stratton Advocates ranging from colluding with a judicial officer in order to circumvent Court orders, purported forgery of documents, hacking of Registrar of Companies computers, conspiracy to defraud and a complaint to investigative and regulatory agencies as against the said firm of advocates.

6. Aside from the above assertions, there is no representation by the Applicant that the said firm of advocates at any given point acted on his behalf. The Respondent's retort to the Applicant's allegations anchor on the twin fact that the accusations are merely spurious and that the Respondent has failed to tangibly demonstrate and or evince conflict of interest by the firm of Kaplan and Stratton Advocates to portend real prejudice and or mischief, in order to warrant an order of recusal and or barring it from representing the Respondent. Further to the forestated, there is no indication from the record or otherwise, that the said firm of advocates represented and or represents the Applicant in other litigious matters filed between the parties.

7. It must be stated at this juncture that an order in the nature of recusal and or barring of counsel from representation of a party or participating in proceedings on behalf of a party, as sought by the Applicant, rests on whether a state of affairs by way of conflict of interest that may portend real prejudice and mischief exists. With the above in reserve, Black's Law Dictionary Tenth Edition defines conflict of interest as :-

- “ 1. A real or seeming incompatibility between one's private interests and one's public or fiduciary duties.
2. A real or seeming incompatibility between the interests of two of a lawyer's clients, such that the lawyer is disqualified from representing both clients if the dual representation adversely affects either client or if the clients do not consent”.



8. And as regards what constitutes conflict of interest and client confidentiality Halsbury Laws of England 4th Edition at Para. 527, Pg. 353 states:-

“A practicing barrister must not accept any instruction if there is or appears to be a conflict or risk of conflict either between the interests of the barrister and some other person or between the interests of any one or more clients, unless all relevant persons consent to the barrister accepting the instructions.

A barrister must also not accept instructions if there is a risk that information confidential to another client or former client might be communicated to or used for the benefit of anyone other than that client or former client without their consent.”

9. Within our jurisdiction, The Law Society of Kenya Code of Standards of Professional Practice and Ethical Conduct, 2016 defines conflict of interest in Rule 6 Paragraph 96 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.”

10. Having noted the above definitions, on the premise of the material presented before this Court and arguments advanced by the Applicant, it is difficult to see how perceived or actual conflict of interest may arise to warrant an order of recusal or barring of the firm of Kaplan and Stratton Advocates from participating in the instant proceedings. Meanwhile, save for the purported allegations concerning circumventing Court orders, purported forgery of documents, hacking of Registrar of Companies computers, conspiracy to defraud and complaints to investigative and regulatory agencies, Annexures Acccka-5, Acccka-7, Acccka-8, Acccka-6 and Acccka-9, they are in the court’s view not conceivable material to shore up the claims advanced in the above respect.

11. By the Applicant’s affidavit material, this Court must equally question itself as to what personal interests by the said firm of advocates, could possibly and adversely impact its representation of the Respondent against the Applicant’s claim. To my mind, nothing of the sort has been presented and or demonstrated by the Applicant. At the risk of repetition, Annexures Acccka-5, Acccka-7, Acccka-8, Accca-6 and Accca-9 read contemporaneously and or separately do not visibly demonstrate the key ingredient of conflict of interest necessitating this Court to intervene as sought for by the Applicant. It must also be stated that the question of conflict of interest is almost unvaryingly tied to client confidentiality entailing the advocate’s duty not to disclose or misuse privileged information obtained in a client-advocate relationship by dint of Section 134 of the *Evidence Act*.

12. In the case of King Woolen Mills Ltd [formerly known as Manchester Outfitters Suiting Division Ltd] v Kaplan and Stratton Advocates [1993] e KLR (per Muli JA) it was held of an advocate who had acted for common clients and who were parties in the subsequent main litigation before the court, that arising from the contractual fiduciary relationship between him and his common clients: -

“[T]he information imparted to (him) by the individual clients was confidential. [He] owed a duty to his individual clients not to disclose or divulge any confidential or secret information imparted to him in confidence to anyone else including the clients in the (common) transaction without the consent of the client imparting the confidential information... nor do I think for a moment that it can be argued that the duty and



obligations imposed on him as a common advocate ceased after the conclusion of the transaction for which returns were made.”

13. While appraising itself of the English decision in *Supasave Retail Ltd v Coward Chance & Others* [1991] 1 ALLER where the decision in *Rakusen v Ellis, Munday and Clarke* [1912]1 ch. 831 was followed, the Court of Appeal stated that:

“Applying the above tests to the facts in the present case, I must be satisfied that real mischief or real prejudice are rightly appreciated...

I have come to the firm conclusion that real prejudice and real mischief are anticipated if the Respondents are permitted to act for the defendants in the main suit.”.

14. In a later decision, the Court of Appeal in *Delphis Bank Ltd v Channan Singh Chatthe & 6 Others* [2005] eKLR while considering the objection against the participation of an advocate in representing a party in the matter where erstwhile counsel had prepared disputed instruments and was likely to be summoned as a witness. The Court while addressing itself to various scenarios in which conflict may arise equally stated that:-

“The starting point is, of course, to reiterate that most valued constitutional right to a litigant; the right to a legal representative or advocate of his choice. In some cases however, particularly civil, the right may be put to serious test if there is a conflict of interests which may endanger the equally hallowed principle of confidentiality in advocate/client fiduciary relationships or where the advocate would double up as a witness. There is otherwise 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 by this Court is whether real mischief or real prejudice will in all human probability result.

15. In conclusion, the said Court emphasized, while considering the nature of the application as is the one presently for determination:-

“.....each case must turn on its own facts to establish whether real mischief and real prejudice will result. In this case, we hardly have any facts to consider in arriving at such a conclusion.”

16. In this case, this Court reiterates that the Applicant has visibly and or tangible failed to demonstrate his assertion to which a situation of conflict of interest may arise. The Court concurs with the Respondent that the Applicant’s allegation may be spurious and or unfounded. It is not enough to make vague allegations without some substantiation. In this instance, any perceivable assertion of existence of conflict of interest appears tenuous.

17. Even if some material had been supplied by the Applicant to prop up the allegations of conflict of interest, the test to be applied would be whether real mischief and real prejudice will, in all human probability, result, as stated by the Court of Appeal in *Albert Chaurembo Mumba & 7 Others v Maurice M. Munyao & 148 others* [2015] eKLR. In the latter case, the Court reiterated that the burden is upon the party seeking to bar an advocate from acting in a matter to prove the existence of factors such as conflict of interest, actual or potential breach of the duty to protect confidential information, or misconduct giving rise to the anticipation of real mischief or real prejudice. In other words, to establish the factual basis for such apprehension or anticipation.

18. It must equally be accentuated that the removal of an advocate from representing a client is not to be taken lightly as the litigant who appointed such advocate enjoys the constitutional right to be



represented by an advocate of his choice and the right to a fair hearing. This was emphasized by the Court of Appeal in *Jopa Vilas LLC v Overseas Private Investment Corp & 2 Others* [2014] eKLR where while quoting the decision in *Delphis Bank Limited* (supra) the Court stated therein as follows:

“The Supreme Court of Samoa in *Apia Quality Meats Limited v Westfield Holdings Limited* [2007] 3 LRC 172 held on the subject of removal of an Advocate from proceedings that such an application had to be considered under the relevant legal principles on the courts exercise of inherent jurisdiction to control the conduct of the proceedings and those who appeared before it as counsel. The factors to be considered were such factors as conflict of interest, actual or potential breach of the duty to protect confidential information, or misconduct. It was further held that removal of an Advocate from acting for a party in proceedings was an extraordinary and drastic remedy to be contemplated only in the most extraordinary circumstances, requiring misconduct so serious that removal was the only way of safeguarding the future integrity of the proceedings.”

19. In the end, this Court reasonably believes that it has sufficiently addressed itself to the issue and as a consequence is not persuaded by the Applicant’s motion dated 25/8/2024. It is dismissed with attendant costs.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 12TH DAY OF JUNE 2025.

* **

JANET MULWA

JUDGE.

