



REPUBLIC OF KENYA



KENYA LAW

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Njagi v Gatua (Being sued in her capacity and as an Administrator of the Estate of Gatua Kamuyi - Deceased) & 2 others (Environment & Land Case E013 of 2024) [2025] KEELC 3881 (KLR) (15 May 2025) (Ruling)

Neutral citation: [2025] KEELC 3881 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA
ENVIRONMENT & LAND CASE E013 OF 2024**

JM MUTUNGI, J

MAY 15, 2025

BETWEEN

PRISCILLA MUTHONI NJAGI PLAINTIFF

AND

IRENE KUTHI GATUA (BEING SUED IN HER CAPACITY AND AS AN ADMINISTRATOR OF THE ESTATE OF GATUA KAMUYI - DECEASED) 1ST DEFENDANT

PERIS WANJIRA MWANIKI (BEING SUED AS THE ADMINISTRATOR OF THE ESTATE OF GATUA KAMUNYI - DECEASED) 2ND DEFENDANT

PATRICK MUKUNDI MBOGO 3RD DEFENDANT

RULING

1. This Ruling is in respect to the Applicant's notice of motion application dated 24th September 2024. The Applicant seeks the following orders:
 1. Spent
 2. That the Honourable Court be pleased to disqualify the firm of Rugaita and Company Advocates from further acting for the 1st and 3rd Defendants/Respondents or any other party in this matter.
 3. That costs of this Application be borne by the Defendants.
2. The application is based on the grounds outlined in the application itself and in the affidavit sworn by the Applicant on the same date. The Plaintiff/Applicant states that in 2013, she retained the services of Rugaita & Company Advocates to represent her in High Court Succession Miscellaneous Application No. 75 of 2013, which related to her late father's estate, Mugo Njagi Ndiga. She states she instructed



the Firm of Rugaita & Company Advocates to apply for letters of Administration *Ad Colligenda Bona*, and authorized them to litigate on her behalf in Embu HCCC No. 134 of 2009 as well as in Kerugoya Ltd No. 19 of 2005. She avers that she paid the firm instruction fees including a fee of fourteen thousand Kenya Shillings (Kshs. 14,000/-) for these services.

3. The Plaintiff/Applicant avers that she was granted the letters of administration *Ad Colligenda Bona* and states that the Firm of Rugaita & Company Advocates continued to represent her in the cases. During this time, the Applicant contends that the firm acquired confidential and privileged information regarding her personal affairs and interests in the estate, particularly concerning land disputes. The Applicant states she has discovered that Rugaita & Company Advocates represents the 1st and 3rd Defendants in this suit, whose interests directly conflict with hers. She avers that she believes that because the firm previously represented her, it could use the confidential information obtained during that representation to her detriment. She asserts that this representation by Rugaita & Company Advocates creates a clear conflict of interest that could prejudice her should the said firm continue to act for the 1st and 3rd Defendants. The Applicant thus seeks to have the Firm of Rugaita & Company Advocates disqualified from representing the Defendants/Respondents due to the alleged conflict of interest.
4. The Law Firm of Rugaita & Co. Advocates filed its Replying Affidavit through Ms. Wairimu Mubari, the advocate representing the Firm in the matter. Ms. Wairimu Mubaria Advocate averred that the Firm came on record for the 1st Respondent in Embu High Court Succession Cause No. 161 of 1994 in 2020. Since then, there have been various cases involving the Applicant and the 1st Respondent, including Kerugoya High Court ELC No. 010 of 2021; Gichugu Criminal Cases No. 147/2020 and No. 433/2023; Kerugoya High Court Petition No. 7/2023, and Kerugoya ELC Case No. 13/2024, all in which the Firm of Rugaita & Co. Advocates has represented the 1st Respondent and continues to represent her.
5. The Advocate explained that the Applicant, who always has had legal representation, had never complained or raised any objection about the Respondent Firm's involvement. The Counsel for the Respondents argued that the Applicant's application is malicious and is intended to deprive the 1st Respondent of her constitutional right to legal representation by an Advocate of her choice. Counsel further stated that the Applicant had not provided any evidence to demonstrate that their representation of the Applicant to obtain the grant of Letters of Administration *ad Colligenda bona* on behalf of the Applicant had any relevance and/or correlation to the instant case. Counsel further pointed out that the Applicant had not explained the nature of the confidential information that would allegedly compromise and/or prejudice the Applicant.

Applicant's Written Submissions

6. The Applicant's Counsel in his submissions argued that the obtaining situation in the instant matter constituted a conflict of interest on the part of the of the Firm of Rugaita & Company Advocates as the Firm had acted for the Applicant in other previous matters where they could have acquired confidential information. Counsel made reference to Rule 96 of the [*LSK Code of Standards of Professional Practice and Ethical Conduct*](#), which states that:

“96. Situation in which a conflict of interest might arise 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 interest 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.”
7. Counsel submitted that the Firm of Rugaita & Company Advocates filed various pleadings and attended Court on behalf of the Applicant in the High Court Succession Miscellaneous Application No. 75 of 2013 to protect her interests. Even after the conclusion of the succession matter in the High Court, the Firm continued to represent her. Counsel placed reliance on the Court of Appeal decision in *King Woolen Mills Ltd v Kaplan & Straton Advocates* [1993] eKLR, where the Court held:
- “Once the retainer is established, the general principle is that an Advocate should not accept instructions to act for two or more clients where there is a conflict of interest between those clients.”
8. Counsel further argued that the applicant may face a significant risk and real prejudice if the Firm of Rugaita & Company Advocates continued to represent the 1st and 3rd Defendants/Respondents. Counsel emphasized that since the Firm represented the Applicant in various cases, it acquired confidential information regarding the Applicant’s personal circumstances and interests. Counsel noted that one issue in the current matter involved a sale agreement executed between the Applicant and the 1st Defendant on 16th June 1997, as well as another agreement executed on 13th November 2014. which agreements were in existence at the time the Applicant sought services from Rugaita & Company Advocates. In light of these circumstances, Counsel asserted that the interests of the 1st and 3rd Defendants/Respondents are directly adverse to those of the Applicant and hence urged the Court to allow her application in its entirety as it was clear the Firm of Rugaita & Company Advocates was conflicted.

1st and 3rd Respondent’s Submissions

9. Counsel for the 1st and 3rd Respondent’s argued that the burden of proof lies with the person who claims the existence of conflict of interest and/or likelihood of prejudice, to furnish sufficient evidence to substantiate the claim. She emphasized that mere assumptions or suspicions of prejudice are not sufficient grounds to prevent an Advocate from representing a party. Counsel placed reliance on the case of *British American Investment Co (K) Ltd v. Njomaitha Investments Ltd & Anor*, [2014] eKLR where the Court held that:-

“It is therefore clear that where a party asserts that conflict of interest exists, he must provide sufficient evidence to demonstrate that such conflict of interest indeed exists. It is incumbent upon such party wishing to disqualify an Advocate or a Firm of Advocates from acting for a particular party to show that it has suffered or will suffer prejudice if such an advocate or Firm of Advocates continues to so act for that party. Mere suspicion, apprehension of a possible conflict of interest or fear of prejudice cannot be a basis to stop an Advocate from acting on behalf of a party.”



10. Counsel asserted that the Applicant had not adequately shown the Court the prejudice she would face. She emphasized that the application was purely malicious and lacked both legal and factual basis, and hence urged for the dismissal of the application with costs.

Analysis and Determination

11. I have considered the notice of motion application, the Replying Affidavit of the 1st and 3rd Defendant/ Respondents, and the parties written submissions. The issues for determination are firstly; Whether the Firm of Rugaita & Company Advocates is conflicted in representing the 1st and 3rd Defendant, having previously acted for the Applicant and secondly; whether the Applicant has demonstrated that the Firm's continued representation of the 1st and 3rd Defendants would cause her prejudice, and whether the right of the Respondent to counsel of their choice outweighs the Applicant's concerns.

Whether the Firm of Rugaita & Company Advocates is conflicted

12. The Applicant argues that Rugaita & Company Advocates previously represented her in High Court Succession Miscellaneous Application No.75 of 2013, among other matters, and in doing so, acquired confidential information relevant to the present case. The Applicant further argues the Firm's current representation of the 1st and 2nd Defendants, whose interests are directly adverse to hers, allegedly creates a conflict of interest.
13. Rule 96 of the [*LSK Code of Standards of Professional Practice and Ethical Conduct*](#) provides that a conflict of interest arises where:
 1. The interests of one client are directly adverse to those of another client being represented by the Advocate or Firm.
 2. The representation of one client is materially limited by the Advocate's duty to another client, a former client, or personal interest.
 3. There is a risk of using information obtained from a former client to the disadvantage of that client.
14. In the present case, it is evident that the firm of Rugaita & Company Advocates previously represented the Applicant in the succession matter related to her late father's estate. However, the key question is whether the knowledge gained in those proceedings is relevant and capable of prejudicing her in this suit. The burden of proof lies with the party alleging conflict of interest as was held in the case of [*British American Investment Co. \(K\) Ltd \(Supra\)*](#).
15. The Applicant has not provided any evidence to demonstrate that any confidential information was acquired by the Respondent Firm during the previous representation of the Applicant by the Firm and that such confidential information was likely to be used against her in the present matter. Although she alleges a risk of prejudice, no concrete evidence has been presented to substantiate that indeed any confidential information as relates to the present matter was gained by the Firm and would be prejudicial to her interests if the Firm was to continue representation of the 1st and 3rd Defendants in the present case.
16. The Respondents argue that the Applicant's application seeks to unfairly deprive them of the right to legal representation by an Advocate of their choice. Article 50 (2) (g) of the [*Constitution*](#) guarantees every person the right to choose legal representation. This right, however, is not absolute and can be limited where a conflict of interest is proven. The Court of Appeal in the case of [*Delphis Bank Limited*](#)



v Channan Singh Chatthe & 6 Others (2005) 1 KLR 766 acknowledged that it was the Constitutional right of a party to be represented by an Advocate of his choice. The Court stated thus:-

“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 maybe put to serious test if there is a conflict of interest 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.”

17. The Court of Appeal in the case held there had to be substantiated evidence of breach of confidentiality and likely prejudice for an Advocate to be barred from representing a party who had appointed him. That led the Judges in the case to hold thus:-

“--- In sum, there is no evidence before as, us there should be, for consideration before the drastic decision of interfering with a party’s constitutional right to Counsel of his choice is interfered with.”

18. In the instant matter other than stating that the Law Firm of Rugaita & Company Advocates acted for her previously in other matters, the Applicant has not demonstrated any confidential information touching on the matter the subject of the instant suit was passed on to the Law Firm so as to create a conflict of interest. Equally the Applicant has not demonstrated the potential prejudice she is likely to suffer if the Firm of Rugaita & Company Advocates continues to represent the 1st and 3rd Respondents.
19. The upshot is that I find no basis upon which the 1st and 3rd Defendants choice of Counsel can be interfered with. They have a right to be represented by an Advocate of their choice. The Notice of Motion dated 24th September 2024 is without any merit and the same is hereby dismissed with costs to the 1st and 3rd Defendants.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT KERUGOYA THIS 15TH DAY OF MAY 2025.

J. M. MUTUNGI

ELC - JUDGE

