



**Shauri & 2 others v Kagecha (Criminal Revision 193 of 2022)
[2023] KEHC 20455 (KLR) (4 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 20455 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CRIMINAL REVISION 193 OF 2022**

A. ONG'INJO, J

JULY 4, 2023

BETWEEN

JOHN SHAURI 1ST APPLICANT

MATHIAS MWANGEMI 2ND APPLICANT

KALAMA WASHE 3RD APPLICANT

AND

ERASTUS MAINA KAGECHA RESPONDENT

*(Application for stay of proceedings in Shanzu CR. Case
No E649 of 2021 Republic vs Robert Lugo and 11 others.)*

RULING

1. The Applicants John Shauri, Mathias Mwangemi and Kalama Washe filed application dated November 24, 2022 seeking that proceedings in Shanzu CR Case No E649 of 2021 Republic vs Robert Lugo and 11 others be stayed and that the court issues an order revising, sets aside and/or quashes order mode on October 18, 2022 dismissing application by the applicants seeking to declare that the Complainants Advocate was conflicted as she acted for them.
2. The application was supported by grounds on the face of the application and supporting affidavit of John Shauri. The Applicants argued that the advocate had a lot of confidential information since she acted for them and that they shall be greatly prejudiced if the matter proceeds to hearing.
3. The Applicants attached an agreement for legal representation which was signed by the advocate subject of this application. Ms Mosiara, she signed on behalf of the firm of Mwamuye Mzungu Solomon Advocate (LLP). The Applicants also annexed proceedings in HCCR Appeal No 37 of 2018 but the name of the advocate in question does not feature.



4. Ms Mosiara Advocate filed a replying affidavit sworn on 2/2/2023 and stated she was watching brief for parties at paragraphs 3 on her affidavit in Shanzu CR Case No E649 of 2021 in which applicants and others are charged. She said that application by applicants to have her recuse herself was dismissed.
5. She said that in Shanzu CR Case No 822 of 2015 and HCCR Appeal No 37 of 2015 the applicants were represented by Mr. Macharia Kemani advocate and not herself and as such she had never taken any confidential information or acted for the applicants before any court prior to encountering them in CR Case No E649 of 2021.
6. She averred that the complainant in CR Case No 822 of 2015 and the subject matter are totally different from that in CR Case No E649 of 2021. Ms Mosiara further argued that the application didn't disclose the confidential information they allege she had to support their ground that she should recuse herself from representing the Complainants in the criminal trial at Shanzu.
7. She also argued that the applicants have failed to demonstrate how her representation of the Complainant will prejudice them and as such their application is an abuse of court process, full of falsehood and mis-representation and should be dismissed.
8. Ms Mosiara argued further that if she was to be disqualified from watching brief the complainant's rights under Article 49 and 50 of the Constitution to choose and appoint an advocate of their choice will be violated and that they will not be accorded fair trial hearing.
9. This application was canvassed by way of written submissions. The Applicants filed their submissions on 24/02/2023 whereas Ms Mosiana Advocate filed her submissions on 1st March 2023.
10. From the application, the Supporting Affidavit and annexures thereto as well as from the Replying Affidavit and the submissions filed by the parties the issue for determination is whether the applicants have satisfied the court to issue orders sought:
 - i. They didn't disclose confidential information alleged given to Ms Mosiara Advocate.
 - ii. They didn't say how the alleged information related to the current trial against them.
 - iii. They have not shown how the proceedings in CR Appeal No 37 of 2018 is related to the current trial.
 - iv. There is no evidence Ms Mosiana Advocate represented the complainants either in CR Appeal No 37 of 2018 or in Shanzu CR Case No 822 of 2015.
11. The applicant's application lacks merit and the same is dismissed.

**DATED, SIGNED AND DELIVERED IN OPEN COURT /ONLINE THROUGH MS TEAMS, THIS
4TH DAY OF JULY, 2023**

HON. LADY JUSTICE A. ONG'INJO
JUDGE

In the presence of:-

Bebora - Court assistant

State Counsel - Mr. Ngiri

Applicants – Present in persons

Hon. Lady Justice A. Ong'injo



Judge

