

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO 448 OF 1993

MURATHI CHAMBIRA.....APPLICANT

VERSUS

M'IRINGO KIRIA.....RESPONDENT

RULING

Although it is not expressly stated in the Advocates Act (Cap 16) it is an implied rule of practice and ethics that an advocate should not act in matter where his services had been retained by both parties to a litigation involving the same subject matter in dispute.

In the instant case Mr. Mugo was instructed by the respondent in July, 1993 and he lodged a caution on his behalf in respect of land parcel No. Magumoni/Rubate/463. Two months later he was briefed by the applicant and shifted his alliance to represent him. It must be remembered he had initially obtained full instructions from the respondent.

Mr Riungu has argued this application on behalf of the respondent who now feels compromised by the act of Mr Mugo, as the suit involves the same piece of land.

This Court did observe in *Malizella Karambu Muriithi vs Ephantus Chege* HCCC No 53 of 1990 as follows:

“It would be a sad day for courts to disqualify counsels chosen by litigants. A litigant is entitled to be represented by a counsel of his choice. The courts leave it to the counsels themselves that exercising their minds reasonably at all times they would not engage in litigation that would embarrass them professionally or bring disrepute to their calling as officers of this Court “ – Per Ongudi J.

That case involved a counsel who had been a land registrar and who in his days in the civil service visited the suit land before resigning to practice. The Court dismissed an application for disqualification on the ground that what he did in his capacity as a land registrar had no bearing on the matters before it

In the instant case Mr. Mugo has had instructions from both sides. The respondent rightly feels his position is compromised.

I agree with him entirely. It cannot be dismissed that Mr. Mugo may use instructions he received from one party to the benefit of the other. That would be detrimental to the rules of natural justice and to our sense of justice and morality.

For the above reasons I order that Mr. Mugo do disqualify himself from the conduct of this case.

There shall be no orders as to costs.

Dated and delivered at Meru this 20th day of January 1995

C.O ONG'UDI

JUDGE

