



Ndenicha & 3 others v Mjomba (Suing as Personal Representatives and Administrators of the Estate of Ambrose Mwadeghu Kichengela) (Environment and Land Appeal E017 of 2024) [2025] KEELC 6454 (KLR) (Environment and Land) (29 September 2025) (Judgment)

Neutral citation: [2025] KEELC 6454 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VOI
ENVIRONMENT AND LAND
ENVIRONMENT AND LAND APPEAL E017 OF 2024
EK WABWOTO, J
SEPTEMBER 29, 2025**

BETWEEN

**NGONYO YESA NDENICHA 1ST APPELLANT
EUSTACE KAMAU NGARI 2ND APPELLANT
ELIUD MWANGO'MBE MLOLWA 3RD APPELLANT
BENJAMIN MWAMBURI MGHANGA 4TH APPELLANT**

AND

**FAITH CHANYA MJOMBA RESPONDENT
SUING AS PERSONAL REPRESENTATIVES AND ADMINISTRATORS OF
THE ESTATE OF AMBROSE MWADEGHU KICHENGELA**

JUDGMENT

1. This is an appeal against the Ruling of Hon. C. K. Kithinji delivered on the 20th September 2024 disqualified Counsel for the Appellants from acting for them in the matter on account of conflict of interest.
2. The Appellants being aggrieved by the said decision lodged the instant appeal vide a Memorandum of Appeal dated 2nd October 2024 which was premised on the following grounds:-
 - i. That the Honorable Magistrate erred in law and fact in disqualifying Mr. Brian Motuka from representing the Appellants on account of conflict of interest without any justifiable cause and or cogent evidence thereby infringing upon the Appellants' fundamental right to choose an Advocate of their choice as envisaged in Article 50(2)(g) of the Constitution of Kenya.



- ii. That the Learned Magistrate erred in law and fact in failing to be neutral arbiter and suo motto moved from representing the Appellants on account of conflict of interest thereby grossly infringing upon the Appellants rights to fair trial as envisaged in Article to 25 (c) and 50 (1) of *the Constitution* of Kenya 2010.
3. The Appellant thus sought the following reliefs:-
 - i. The Appeal be allowed with costs.
 - ii. The ruling and all the other consequential orders thereto of the Principal Magistrate C. K. Kithinji be set aside and the Appellants' Advocate be allowed to continue representing the Appellants in the lower court proceedings.
 - iii. Such and any other orders the Honourable Court may deem just and expedient.
4. The appeal was canvassed by way of written submissions pursuant to the directions issued by this court. The Appellants filed written submissions dated 25th July 2025 while the Respondent filed written submissions dated 26th July 2025.
5. The Appellants submitted that there is no shred of evidence demonstrating any conflict of interest to disqualify the Appellants Advocate Mr. Brian Motuka from acting for the Appellants in the matter. It was also submitted that there was no resolution, letter, email or communication whatsoever from Kishamba B group ranch committee proving that Mr. Motuka is their advocate of among the advocates appointed by the group ranch to act for their interest. The respondent had also not produced any evidence or explained to the trial court any circumstantial evidence that would lead a competent court to arrive at a conclusion that Mr. Motuka ever acted or engaged in whatever possible capacity on behalf of the respondent in respect to the dispute herein, the said Counsel was neither involved in the allocation process or the decision making process of the issuance of the suit property at any time and that Kishamba B group ranch is an artificial legal entity distinct from its membership and as such it has capacity to appoint its own advocates.
6. The Appellants counsel placed reliance on the cases of Murgor & Murgor vs Kenya Pipeline [2021] eKLR, Jopa Villas LLC vs Overseas Private Investment Corp & 2 Others [2014] eKLR, David Mereka & Co. Advocates vs County Government of Nairobi [2021] eKLR among others.
7. The Appellants faulted the trial magistrate for failing to be guided by *the Constitution* which protects and enshrines the most valued Constitutional Rights to a litigant to a legal representation of an Advocate of his/her choice.
8. It was also submitted that the right to legal representation is a fundamental principle of *the constitution* of Kenya 2010 and the case of William Audi Odode & Another =Versus= John Yier & Another, the Court of Appeal Application No. NAI 360 of 2004 was cited in support.
9. The court was urged to allow the appeal.
10. The Respondent on the other hand submitted that there is clear conflict of interest and that the Learned Magistrate did not err in her decision of disqualifying Mr. Motuka from representing the Appellants in the matter. It was argued that Mr. Motuka admitted to be an Advocate of the Ranch and therefore he cannot represent one member against the other in any matter where there is a dispute between the members. He can only represent the Ranch when it is suing or has been sued. Reliance was placed on several cases including the case of Kenya Commercial Bank Limited vs Mukeshkumar Kantilal Patel & Another [2015] eKLR among others.



11. The Counsel for the Respondent concluded his submissions by urging the court to dismiss the appeal with costs.
12. The court has considered the Record of Appeal and the written submissions filed herein and is of the considered view that the singular issue for determination in this appeal is whether Mr. Brian Motuka Advocate should be disqualified from representing the Appellants as was held by the learned Magistrate in her ruling dated 20th September 2024.
13. The general principles guiding the disqualification of Advocates from appearing for a client in a matter are well established as follows: -
 - i. The basis upon which a court disqualifies an Advocate from acting arises from the need to protect the interests of administration of justice. Whereas it is understood that choice of Counsel is an entitlement of a party, such Counsel must always bear in mind that he/she becomes an officer of the court and as such owes an allegiance to a higher cause (justice and truth) than serving the interests of the client.
 - ii. Disqualification of an Advocate is only desirable in contentious matters and where there is or was an Advocate-Client relationship.
 - iii. It must be apparent that the Advocate sought to be disqualified will be required as a witness to give evidence in the matter.
 - iv. It is desirable that when the principle of confidentiality in an Advocate/Client fiduciary relationship will be prejudiced or where there is a possibility of real conflict of interest, then an Advocate sought to be disqualified ceases to appear in the matter.
 - v. The fact that an Advocate acted for a litigant does not, per se, lead to a situation of conflict of interest.
 - vi. Conflict of interest is an issue of fact which must be proved by way of evidence.
 - vii. It is not a requirement that in a situation where a firm of Advocates acted for the opposite party all the Advocates in the firm be disqualified from the matter. In such an instance, only the Advocates who are in possession of confidential information relevant to the matters in issue before court or tribunal may be called upon to cease from appearing in the matter.
14. Further it is also worth noting that an advocate can be disqualified from representing a party in a case if a conflict of interest or a reasonable apprehension of bias arises, or if the advocate is required to give evidence in the matter, as outlined in the [Advocates Act](#).
15. This court will now apply the above general principles to the case at hand. In the instant case it is not disputed that Counsel for the Appellant Mr. Motuka is admitted to being an Advocate for the Ranch, the parties herein are also members of the Group Ranch and as such there is possible conflict of interests when Counsel Motuka represents one of the parties and in this case the Appellants.
16. Certainly, in considering the foregoing and this being a contentious matter, it is not in the interest of justice and tenets of fair trial to allow the Mr. Motuka to continue representing the Appellants. Right to a fair hearing applies to both parties and any court or tribunal is obligated to ensure that the same is achieved. The Respondent have successfully demonstrated the prejudice that would be suffered should counsel for the Appellants be allowed to represent the Appellants and there is reasonable apprehension of bias if the said Counsel is allowed to continue representing the Appellants.



17. In the circumstances, it is the finding of this court that the Learned Magistrate did not err when she arrived at her decision and this court has no basis to interfere with the same.
18. In respect to costs of the appeal, it is worth noting that the suit before the trial court is pending for determination and further the Appellants are still expected to engage the services of another Advocate. Bearing this in mind, this court directs each party to bear own costs of the appeal.
19. In conclusion, it is the finding of this court that this appeal lacks merit and the same is dismissed with an order that each party bears own costs of the appeal.

DATED, SIGNED AND DELIVERED VIRTUALLY AT VOI THIS 29TH DAY OF SEPTEMBER 2025.

E. K. WABWOTO

JUDGE

In the presence of:-

Mr. Motuka for the Appellants.

Mr. Mwzighe for the Respondent.

Court Assistant: Mary Ngoira.

