



Arwa & Change Advocates LLP v Muturi (Sued in His Capacity and as the Administrator of the Estate of the Late Sister Florence Wangari Yongi) & another; Muturi (Sued in His Capacity and as the Administrator of the Estate of the Late Sister Florence Wangari Yongi) (Plaintiff to the Counterclaim); Arwa & Change Advocates LLP (Defendant); Remington Advocates LLP (Respondent) (Commercial Case E129 of 2022) [2025] KEHC 14798 (KLR) (Commercial and Tax) (3 October 2025) (Ruling)

Neutral citation: [2025] KEHC 14798 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E129 OF 2022
MN MWANGI, J
OCTOBER 3, 2025

BETWEEN

ARWA & CHANGE ADVOCATES LLP PLAINTIFF

AND

FRANCIS YONGI MUTURI (SUED IN HIS CAPACITY AND AS THE ADMINISTRATOR OF THE ESTATE OF THE LATE SISTER FLORENCE WANGARI YONGI) 1ST DEFENDANT

SMITH LACIEN, LLP 2ND DEFENDANT

AND

FRANCIS YONGI MUTURI (SUED IN HIS CAPACITY AND AS THE ADMINISTRATOR OF THE ESTATE OF THE LATE SISTER FLORENCE WANGARI YONGI) PLAINTIFF TO THE COUNTERCLAIM

AND

ARWA & CHANGE ADVOCATES LLP DEFENDANT

AND

REMINGTON ADVOCATES LLP RESPONDENT



RULING

1. The defendant/applicant by way of counter-claim filed a Notice of Motion application dated 29th July 2024 pursuant to the provisions of Sections 1A, 1B & 3A of the Civil Procedure Act, Rule 8 of the Advocate (Practice) Rules, Rules 92 to 102 of the Law Society of Kenya Code of Ethics and Conduct for Advocates 2017, Order 51 of the Civil Procedure Rules 2010, Article 50 of the Constitution of Kenya, 2010 and other enabling provisions of the law.
2. The defendant prays for an order declaring the continued representation of the plaintiff (by way of counterclaim) by Remington Advocates LLP, specifically through its partner, Remington Boniface Otieno, constitutes a conflict of interest and is prejudicial to the defendant, an order barring Remington Advocates LLP, its partners, servants, or agents from acting for the plaintiff (by way of counterclaim) in this suit or any related proceedings against the defendant (by way of counterclaim), an order that the Notice of Change of Advocates dated 30th June 2023 is incurably defective, rendering the firm improperly on record, and an order striking out and/or expunging the Notice of Change of Advocates dated 30th June 2023, along with the application and all other documents filed by Remington Advocates LLP in this matter.
3. The application is premised on the grounds on the face of the Motion, and it is supported by an affidavit sworn on the same day by Mr. Rupia Otieno Change, an Advocate of the High Court of Kenya and a partner in the defendant law firm. Mr. Rupia Change averred that Remington Otieno Advocate, now acting for the plaintiff (by way of counterclaim), previously worked at the defendant law firm as an Associate Advocate from 11th March 2019 to 22nd April 2022 and was actively involved in the plaintiff's legal matters during that time. He contended that Mr. Remington Otieno's continued representation of the plaintiff now constitutes a conflict of interest. Mr. Rupia Change contended that during his employment, Mr. Remington Otieno had access to confidential client information and was involved in drafting key documents now contested in the dispute herein. He deposed that for the said reason, the defendant intends to call him as a witness regarding those documents, thereby barring him from acting as an Advocate in this matter under Rule 8 of the Advocates (Practice) Rules.
4. Mr. Rupia Change claimed that Mr. Remington Otieno colluded with a non-lawyer by the name of Ralph Nguma and a foreign Advocate to terminate the defendant's retainer and misappropriate legal fees. He averred that currently, the non-lawyer is facing criminal charges for forgery and masquerading, and that he is being represented by Mr. Remington Otieno. Mr. Rupia Change alleged that Mr. Remington Otieno has issued threats via text and phone calls, stating that he would use confidential information to harm the defendant's reputation, which threats have been reported to the Police. He asserted that the conduct of Mr. Remington Otieno violates the provisions under Rule 93 of the Law Society of Kenya Code of Ethics due to his personal interests, hostile conduct, and divided loyalty between the plaintiff and the non-lawyer.
5. Mr. Rupia Change deposed that the Notice of Change of Advocates dated 30th June 2023 is incurably defective for naming a non-existent party. He stated that allowing Mr. Remington Otieno to proceed would result in serious prejudice, infringe on the right to a fair hearing under Article 50 of the Constitution, and compromise confidentiality.
6. In opposition to the application, the respondent filed a replying affidavit sworn on 27th September 2024 by Mr. Remington Otieno, an Advocate of the High Court of Kenya and a partner at the respondent law firm. He averred that Francis Yongi Muturi, who was sued as the Administrator of the Estate of



Florence Wangari Yongi, died on 9th April 2023. That subsequently, two applications for substitution were filed. One by his widow Lilian Wangari Yongi and another one was separately filed by Arwa & Change Advocates LLP proposing Mary Nyambura Yongi (his daughter). Mr. Remington Otieno claimed that the respondent has since been on record for the two proposed Administrators. He stated that the defendant had previously initiated out-of-court settlement talks which it participated in, at Lilian Wanjiru Yongi's request, and that a draft Deed of Settlement was shared but rejected by the estates.

7. Mr. Remington Otieno deposed that on 26th April 2024, the defendant withdrew its suit, leaving the counter-claim pending. He confirmed that he was previously employed by the defendant law firm but denied any involvement in matters related to the plaintiff or preparation of the contested documents. He further denied ever having had a Client-Advocate relationship with the defendant and averred to having provided medical evidence showing his absence from work during the period when the alleged documents were prepared. He averred that no factual or legal basis had been laid to support the claim of conflict of interest under the cited Rules. He posited that any legitimate concern should have been raised earlier when he first came on record in July 2023. He asserted that representation by Counsel of one's choice is a constitutional right.
8. In a rejoinder, the defendant filed a further affidavit sworn on 5th December 2024 by Mr. Rupia Otieno Change, an Advocate of the High Court of Kenya and a partner in the defendant law firm. He reiterated that the respondent previously worked at the defendant law firm during the time when the plaintiff was a client, but he is now acting against his former employer in the same matter, relating to events and documents he previously worked on directly, thereby violating the provisions of Rules 93, 94 & 96 of the Law Society of Kenya Code of Ethics for Advocates, which amounts to a breach of confidentiality. Mr. Rupia Change averred that the disputed Retainer Agreements dated 30th June 2021 & 10th August 2021 are central to the counterclaim, which documents the respondent prepared and/or procured, and ensured their execution. In view of the above averments, Mr. Rupia Change contended that the Mr. Remington Otieno is a material witness and cannot ethically continue acting as Counsel in this matter.
9. It was stated by Mr. Rupia Change that the respondent's replying affidavit refers to annexures RBO-1 & 2 that were not attached, thus undermining their evidential value. He contended that on 26th September 2024, the respondent admitted in Court to being conflicted and sought time to allow the plaintiff to appoint new Counsel. In addition, that the respondent attended the Advocates' Complaints Commission proceedings on behalf of Mr. Francis Yongi Muturi and Mr. Ralph Nguma, and that he is currently representing Mr. Nguma, who is facing criminal charges related to forgery in this matter. Mr. Rupia Change contended that a letter to the Law Society of Kenya from the respondent undermines the defendants and misrepresents the facts, suggesting a personal interest in the case. He accused the respondent, and in particular, Mr. Remington Otieno of the respondent law firm, of misusing confidential information, issuing threats and colluding in false complaints that led to his (Mr. Rupia Change's) unlawful arrest.
10. The application herein was canvassed by way of written submissions. The defendant's submissions were filed by the law firm of G. M Gamma Advocates LLP on 6th December 2024. The respondent neither filed written submissions as none are available on the Court record and the Case Tracking System, nor did it make any oral submissions in opposition to the application herein.
11. Mr. Gichangi, learned Counsel for the defendant relied on Rule 93 of the Law Society of Kenya Code of Ethics & Conduct for Advocates, 2017 definition of what amounts to a conflict of interest and submitted that Advocates are expected to act independently and free from undue influence as per Rule 21 thereunder. He argued that Mr. Remington Otieno had deep involvement in the plaintiff's matter while employed at the defendant law firm from March 2019 to April 2022, as he had helped to prepare



key disputed documents, being two Retainer Agreements dated 30th June 2021 and 10th August 2021, which are central to the counterclaim.

12. Counsel contended that the respondent is also the Advocate for Mr. Ralph Nguma, who is accused of masquerading and forgery in relation to the plaintiff's legal representation. Further, that in a letter dated 23rd January 2023, the respondent is said to have defended Mr. Nguma's actions and questioned the authenticity of the aforesaid Retainer Agreements. Counsel submitted that the respondent orchestrated and/or participated in efforts to prosecute Mr. Change at the Advocates Complaints Commission shortly after leaving the defendant law firm, and that he attended meetings at the Advocates Complaints Commission on behalf of both Mr. Ralph Nguma and the plaintiff, showing continued entanglement in the matter before formally coming on record in June 2023. Counsel submitted that it is apparent that the respondent cannot provide independent legal representation, due to being compromised by personal, emotional, and multi-client interests.
13. Mr. Gichangi relied on the case of *Century Oil Trading Company Limited v Kenya Shell Limited* [2008] KEHC 3480 (KLR), and submitted that allowing the respondent to represent the plaintiff in this suit would cause real prejudice, and especially so, since the respondent has threatened to use confidential information against the defendant, has actively participated in efforts to have the defendant's partner disciplined and arrested. Counsel argued that this would unfairly tilt the scales of justice in the plaintiff's favour. Counsel referred to the provisions of Rule 8 of the Advocates (Practice) Rules, and the case of *Delphis Bank Ltd v Channan Singh Chatthe & 6 others* [2005] eKLR, in asserting that the continued representation by the respondent, and in particular, Mr. Remington Otieno, poses real prejudice and undue influence since he will be required to testify regarding the authenticity and execution of the two disputed Retainer Agreements.

Analysis And Determination.

14. Upon consideration of the instant application, the grounds on the face of it and the affidavits filed in support thereof, the replying affidavit by the respondent and the written submissions by Counsel for the defendant, the issue that arises for determination is whether the instant application is merited.
15. Rule 8 of the Advocates (Practice) Rules provides that -

No advocate may appear as such before any court or tribunal in any matter in which he has reason to believe that he may be required as a witness to give evidence, whether verbally or by declaration or affidavit; and if, while appearing in any matter, it becomes apparent that he will be required as a witness to give evidence whether verbally or by declaration or affidavit, he shall not continue to appear:

Provided that this rule does not prevent an advocate from giving evidence whether verbally or by declaration or affidavit on formal or non-contentious matter of fact in any matter in which he acts or appears
16. The defendant contended that the respondent, formerly employed as an Associate Advocate by the defendant law firm, worked on the plaintiff's legal matters during his tenure, had access to confidential information, and drafted key documents now in dispute, hence it intends to call him as a witness. The defendant averred that the respondent, with Mr. Ralph Nguma who is not an Advocate, together with a foreign Advocate, colluded to terminate its retainer and misappropriate legal fees. He further averred that the said Ralph Nguma who faces criminal charges for forgery and masquerading, is being represented by the respondent. The defendant claimed that the respondent has since issued threats involving the use of confidential information to damage its reputation. The defendant asserted that the respondent's conduct contravenes the provisions under Rule 93 of the Law Society of Kenya Code



of Ethics. It contended that by the Mr. Remington Otieno acting against his former employer in the same matter relating to events and documents he previously worked on directly, his conduct violates the provisions of Rules 93, 94 & 96 of the Law Society of Kenya Code of Ethics for Advocates and amounts to a breach of confidentiality.

17. Mr. Remington Otieno confirmed that he was previously employed by the defendant law firm but denied any involvement in matters related to the plaintiff or preparation of the contested documents. He also denied ever having had an Advocate-Client relationship with the defendant and stated that he had submitted medical records indicating that he was absent from work during the period the disputed documents were prepared. He contended that the defendant has failed to establish any factual or legal basis for conflict of interest under the cited Rules. He asserted that if any genuine concerns exist, they ought to have been raised when he came on record in July 2023. The respondent maintained that the right to legal representation by Counsel of one's choice is constitutionally protected.
18. In *Delphis Bank Limited v Channan Singh Chatthe & 6 Others* [2005] eKLR, the Court of Appeal cited with approval the case *Rakusen v Ellis, Munday & Clarke* [1912] CH 831, which laid down the test for disqualification of an Advocate as hereunder -

...there is 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 the Court of Appeal is whether real mischief or real prejudice will in all human probability result... (Emphasis added).

19. A party to a suit has a constitutionally underpinned right to be represented by an Advocate of his/her choice in a suit. The said right could however be put to serious test if there was a claim of conflict of interest, which could in turn endanger the principle of confidentiality in an Advocate/Client fiduciary relationship or where an Advocate could also double up as witness. Conflict of interest has been defined in the Law Society of Kenya Code of Standards of Professional Practice and Ethical Conduct, 2016, as hereunder -

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. (Emphasis added).

20. Rule 6 paragraph 99 of the aforesaid Code provides for instances where conflict of interest might arise to 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 interests of the Advocate; and
 - 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.



21. The Court in the case of *Murgor & Murgor Advocates v Kenya Pipeline Co. Ltd* [2021] eKLR, in dismissing an application similar to this one set out the general principles guiding the disqualification of Advocates from appearing for a client in a matter as hereunder -
- 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; and
 - 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.
22. Mr. Remington Otieno Advocate was employed by the defendant at the material time when the plaintiff engaged the services of the defendant. It is evident that although the respondent alleges that he was absent from work during the period in which the impugned Retainer Agreements involving the defendant, the plaintiff, and a foreign Advocate were prepared and executed due to his illness from COVID-19, he did not furnish any documentary evidence to substantiate the said claim.
23. In addition, a perusal of the letter dated 23rd January 2023 addressed to the Deputy Secretary, Compliance & Ethics, at the Law Society of Kenya, reveals that Mr. Remington Otieno is well apprised of the circumstances under which the defendant was engaged to act for the plaintiff in the Ethiopian Airlines Flight matter. The letter provides a detailed account of the role played by Mr. Ralph Nguma as the plaintiff's primary contact in the dispute and outlines the process through which the defendant came on record. It further accuses the defendant of attempting to sideline Mr. Nguma and alleges instances of misrepresentation and professional misconduct in relation to the Ethiopian Airlines Flight claim.
24. In view of the foregoing, I am persuaded by the defendant's position that while Mr. Remington Otieno was employed at the defendant law firm, he worked on the plaintiff's legal matters, had access to confidential information, and was involved in the preparation of key documents which are now at the centre of this dispute. The contents of the letter dated 23rd January 2023 clearly demonstrate that Mr. Remington Otieno of the respondent law firm is well-versed in the circumstances under which the defendant came to represent the plaintiff in the Ethiopian Airlines Flight matter, as well as to how the



matter was handled. It is therefore not so farfetched that the defendant intends to call Mr. Remington Otieno as a witness in these proceedings.

25. In addition, the excerpts of WhatsApp conversations annexed to the affidavit in support of the application herein reveal that Mr. Remington Otieno has expressed the intention to use information acquired during his employment with the defendant to the plaintiff's advantage, and against his former employer. Upon further examination of the annexures attached to the defendant's affidavits, this Court is left in doubt as to whether Mr. Remington Otieno of the respondent law firm can maintain the requisite impartiality and professional detachment. This Court finds that the defendant has sufficiently established the existence of a real possibility of conflict of interest and prejudice.
26. In the end, this Court finds that in the interest of justice, the right to a fair hearing, and the protection of Client-Advocate confidentiality outweigh the right to Counsel of one's choice in the particular circumstances of this case.
27. On perusal of the Notice of Change of Advocates dated 30th June 2023 filed by the respondent in this matter, it is apparent that it states that the respondent was appointed by one Lilian Wanjiru Yongi (Sued in her Capacity as the Administrator of the Estate of the Late Francis Yongi Muturi). It is however noted that the said Lilian Wanjiru Yongi (Sued in her Capacity as the Administrator of the Estate of the Late Francis Yongi Muturi) is not a party to this suit, hence the respondent cannot purport to be acting for an individual who is not a party to this suit.
28. The upshot is that the application herein is merited. It is hereby allowed in the following terms -
 - i. A declaration is hereby issued that the continued representation of the plaintiff (by way of counterclaim) by Remington Advocates LLP and in particular its partner, Remington Boniface Otieno, amounts to a conflict of interest and is prejudicial to the defendant (in the counterclaim);
 - ii. Remington Advocates LLP, its partners, servants, or agents are hereby barred from acting for the plaintiff (by way of counterclaim) in this suit or any related proceedings against the defendant (in the counterclaim);
 - iii. The Notice of Change of Advocates dated 30th June 2023 is declared to be incurably defective. It is hereby struck out;
 - iv. All pleadings, applications and documents filed by Remington Advocates LLP in this matter, save for the instant application, are hereby expunged from the record; and
 - v. Costs of the application herein shall be borne by the respondent.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT NAIROBI ON THIS 3RD DAY OF OCTOBER, 2025.
RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

NJOKI MWANGI

JUDGE

In the presence of:

Mr. Odiyo for the defendant (in the counterclaim)/applicant

Mr. Remington Otieno for the respondent

Mr. Simon Nyamai h/b for Mr. Deya for the 2nd defendant in the main suit



Ms B. Wokabi – Court Assistant.

