



**Kasmani (Suing as Lawful Attorney & Agent of Asgarali Abdulshakur Kasmani) v Kasmani & 2 others (Environment and Land Case E285 of 2025) [2025] KEELC 7270 (KLR) (27 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7270 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE E285 OF 2025  
CG MBOGO, J  
OCTOBER 27, 2025**

**BETWEEN**

**DR. ABDULWAHID ASGARALI KASMANI (SUING AS LAWFUL ATTORNEY & AGENT OF ASGARALI ABDULSHAKUR KASMANI) ..... PLAINTIFF**

**AND**

**ABDULSHAKUR ASGARALI KASMANI ..... 1<sup>ST</sup> DEFENDANT**

**THE CHIEF LAND REGISTRAR ..... 2<sup>ND</sup> DEFENDANT**

**THE HON. ATTORNEY GENERAL ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. Before me is the notice of motion dated 16<sup>th</sup> July, 2025 filed by the plaintiff/applicant, and it is expressed to be brought under Order 51 Rule 1 of the Civil Procedure Rules, Sections 1A, 1B and 3A of the Civil Procedure Act, Rule 9 of the Advocates (Practice) Rules 1966, Rules 82, 83, 84, 85 and 86 of the Law Society of Kenya Code of Ethics and Conduct 2015, and Section 121 (4) of the Evidence Act seeking the following orders:-
  1. Spent.
  2. That the firm of M/s Wandabwa Advocates be barred from representing the 1<sup>st</sup> defendant in this suit due to the apparent conflict of interest.
  3. That the costs of this application be provided for.
2. The application is premised on the grounds inter alia that the firm of Wandabwa Advocates has been representing the plaintiff/applicant and his family in various conveyancing transactions including the transactions that give rise to the instant suit.



3. The application is further supported by the affidavit of the plaintiff/applicant sworn on even date. He deposed that Mr. Wandabwa, the learned counsel has previously represented him and his family including his brother in several matters for over fifteen years, and that he feels it is necessary that the firm is removed from acting for his brother due to apparent conflict of interest. The plaintiff/applicant deposed that the continued representation of the 1<sup>st</sup> defendant/respondent by the said firm amounts to an impermissible breach of fiduciary duty to him, and that Mr. Wandabwa is likely to be a competent witness having authored several documents regarding the suit including the deed of settlement dated 29<sup>th</sup> July, 2024.
4. The application was opposed vide the replying affidavit of Andrew Wandabwa, the learned counsel sworn on 21<sup>st</sup> July, 2025. The learned counsel, deposed that he has not acted in his own capacity or through his firm in the acquisition of the property known as LR. No. 1870/ 1/ 347, as he was introduced to the 1<sup>st</sup> defendant/respondent in the year 2007. He further deposed that he was not also involved personally or through his law firm in the purchase of the property situated in Dubai known as Downtown Views IIT1/1708 and Beach Vista Tower 1/806. He informed the court that he has also not in his personal capacity acted for the plaintiff/applicant's, and neither does he have a retainer from the principal or any file in his chambers.
5. The learned counsel deposed that his law firm through the associate acted for the plaintiff/applicant in the purchase of Eldoret Municipality/Block 9/1942 which was completed and that the transaction documents were handed over to the plaintiff/applicant. Further, that he has not been the family lawyer as alleged, and that he did not advise, take instructions or draw the settlement deeds. He deposed that the mere assertion that his law firm acted for the plaintiff/applicant in a land transaction is insufficient to invoke the court's discretion as prayed. Further, that no extraordinary circumstances have been shown that call for his recusal.
6. The learned counsel deposed that to the extent that the plaintiff/applicant has ceased to be his client, there are no links to the subject matter in this suit that shows he owes a duty to him.
7. The application was further opposed vide the replying affidavit of the 1<sup>st</sup> defendant/respondent sworn on 21<sup>st</sup> July, 2025. The 1<sup>st</sup> defendant/respondent deposed that at the time when the property in South C was purchased by their father, the learned counsel was not known to him or his father, and that these transactions were undertaken by Farouk Adam, Advocate.
8. The 1<sup>st</sup> defendant/respondent further deposed that with regard to the properties acquired in Dubai, the purchase transactions were done with respective developers and that neither the law firm or the advocate were involved at all. With regard to the deed settlement, the 1<sup>st</sup> defendant/respondent deposed that he instructed the firm of Wandabwa & Associates to prepare the same and that he has always dealt with Flora Mweseli, and that at no time was the learned counsel involved in the preparation of the said deed.
9. Flora Anyila Mweseli filed her replying affidavit sworn on 21<sup>st</sup> July, 2025 in response to the application. The learned counsel deposed that the 1<sup>st</sup> defendant/respondent approached the law firm to prepare a deed of settlement. Further, that the final deed of settlement was witnessed by an independent advocate, and at no time was Mr. Wandabwa involved, as he only deals with litigation matters.
10. The application was canvassed by way of written submissions. The plaintiff/applicant filed his written submissions dated 26<sup>th</sup> August, 2025 where he raised one issue for determination which is whether Mr. Wandabwa Advocate and the firm of M/s Wandabwa Advocates should continue representing the 1<sup>st</sup> defendant or be recused for having previously acted for the plaintiff and his family.



11. On this issue, and while relying on the case of *Serve in Love Africa (Silo) Trust v David Kipsang Murey & 7 Others* [2017] eKLR, and the cited provisions of the law, the plaintiff/applicant submitted that Mr. Wandabwa, the learned counsel for the 1<sup>st</sup> defendant/respondent as the principal and founding partner of the law firm is responsible and accountable for the firm's work including the various settlement deeds that are the subject of this suit. The plaintiff/applicant submitted that the deed settlement is an integral part of his case as it is founded on the doctrine of resulting trust.
12. The plaintiff/applicant submitted that an objective assessment of the facts in common cause discloses a massive irreconcilable and insurmountable conflict of interest that to allow the learned counsel to represent the 1<sup>st</sup> defendant/respondent would be tantamount to rewriting the law of conflict of interest. He submitted that conflict of interest is apparent and the learned counsel should recuse himself from the matter to do justice to both counsel and his client. To further buttress on this issue, the plaintiff/applicant relied on the cases of *Uhuru Highway Development Ltd v Central Bank Ltd* [2002] 2 EA 654, and *Leonard Gichora Kiiu & 4 Others v Peter Gicharu Ngige & 12 Others* E&C Petition No. 17 of 2016.
13. The 1<sup>st</sup> defendant/respondent filed his written submissions dated 22<sup>nd</sup> September, 2025. He submitted that for the plaintiff/applicant to succeed in barring the firm and advocate from acting in this matter, he must demonstrate in writing that indeed he instructed the said law firm. While relying on the cases of *Jopa Villas LLC v Overseas Private Investment Corp & 2 others* [2014] KECA 232 (KLR), and *HCC No. 392 of 2016, Imperial Bank Limited (in receivership) & 2 others v Alnashir Popat & 17 others*, the 1<sup>st</sup> defendant/respondent submitted that the fact that an advocate acted for a litigant does not in itself lead to a situation of conflict. Further, that the mere fact that a firm has acted for both parties in a transaction and/or drew the document that forms the subject of litigation does not in itself bar an advocate in the firm from acting for one of the parties unless it is shown as a matter of substance on the facts of the case mischief and real prejudice will in probability result.
14. Further reliance was placed in the cases of *Charles Gitonga Kariuki v Akusi Farmers Co. Ltd* [2007] eKLR, *Rukusen v Ellis, Munday & Clerke* (1912) 1 Ch. 831, *Albert Chaurembo Mumba & 7 Others v Maurice M. Munyao & 148 Others* [2015] eKLR and *British-American Investments Company (K) Limited v Njomaitha Investments Limited & Another* [2014] eKLR.
15. While further reiterating the contents of the learned counsel replying affidavit, the 1<sup>st</sup> defendant/respondent submitted that the plaintiff/applicant has not discharged his legal and evidentiary burden to demonstrate that there was a retainer agreement between the advocate and the plaintiff/applicant's family. Further, it was submitted that there has never existed an advocate client relationship between the firm/advocate with the plaintiff/applicant's family. The 1<sup>st</sup> defendant/respondent further submitted that the fact that the firm participated in the drafting of the deed settlement is not evidence that he imparted confidential information to the firm nor does it bar the firm from acting for one of the parties.
16. The plaintiff/applicant filed his supplementary submissions dated 13<sup>th</sup> October, 2025 and submitted that the averments that instructions to draw the deed of settlement came from the 1<sup>st</sup> defendant/respondent is a triable issue to be determined at the hearing of the main suit. He submitted that there exists a real and substantial likelihood that Mr. Wandabwa is the author of the impugned deed of settlement and legal counsel to both parties.
17. I have considered the application, the replies thereof and the written submissions filed by the plaintiff/applicant and the 1<sup>st</sup> defendant/respondent. The sole issue for determination is whether the firm of M/s Wandabwa Advocates should be barred from representing the 1<sup>st</sup> defendant/ respondent in this suit.



18. The plaintiff/applicant contends that the Mr. Wandabwa of the law firm of Wandabwa Advocates has in the past represented him and his family including his brother, the 1<sup>st</sup> defendant/respondent, in several matters for over fifteen years, and that he feels it is necessary that the firm is removed from acting for his brother due to apparent conflict of interest. In support of his contention, the 1<sup>st</sup> plaintiff/applicant attached a copy of documents with respect to property known as Eldoret Municipality Block 9/1942 showing that Mr. Wandabwa and the law firm represented him. In this case, he contended, that owing to the deed of settlement dated 29<sup>th</sup> July, 2024 prepared by the said law firm, there is apparent conflict of interest. In response thereto, Mr. Wandabwa, the learned counsel for the 1<sup>st</sup> defendant/respondent challenged the application on various grounds including the fact that the properties said to be listed were not drawn by his law firm, and that neither was he involved. Further, he maintained that he has no retainer from the principal, and save for the specified transactions, he has not acted for the family generally or at all. The learned counsel maintained that while the deed settlement was drawn by his firm, he did not advise, take instructions or draw the deed of settlement. The same was done by an advocate in his law firm known as Flora Mweseli.
19. Article 50 (2) (9) of *the Constitution* of Kenya grants to every person the right to: -
- “(a) to choose and be represented by an advocate and to be informed of this right promptly.”
20. Rule 8 of the Advocates (Practice) Rules, 1966 states as follows:-
- “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.”
21. From the above provisions of the law, it is clear that every litigant has a right to their choice of representation by an advocate as a constitutional right. However, in certain instances which are civil in nature, the right may be put to scrutiny if there is a conflict of interest which may endanger the principle of confidentiality in advocate/client fiduciary relationship or where the advocate would double up as a witness.
22. In the case of *Murgor & Murgor Advocates v Kenya Pipeline Co. Ltd* [2021] KEHC 13099 (KLR), Mrima J adopted the following guiding principles in determining whether there is conflict of interest 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.”

23. In the case of *Dorothy Seyanoi Moschioni v. Andrew Stuart & another* (2014) eKLR, Gikonyo J., stated:-

“(12) I will not re-invent the wheel. All the cases which have been quoted by counsels are relevant. I will not multiply them too. What I need to state is that, in applications for disqualification of a legal counsel, a court of law is not to engage a cursory look at the argument that “these advocates participated in the drawing and attestation of the deeds in dispute”; as that kind of approach may create false feeling and dilemmas; for it looks very powerful in appearance and quite attractive that those advocates should be disqualified from acting in the proceedings. It is even more intuitively convincing when the applicant say “ I intend to call them as witnesses”. What the court is supposed to do is to thrust the essential core of the grounds advanced for disqualification, look at the real issues in dispute, the facts of the case and place all that on the scale of the threshold of the law applicable. In the process, courts of law must invariably eliminate any possibility that the arguments for disqualification may have subordinated important factual and legal vitalities in the transactions in question while inflating generalized individual desires to prevent a party from benefiting from a counsel who is supposedly should be “their counsel” in the conveyancing transaction. I say these things because that kind of feeling is associated with ordinary human sense where both parties in the suit were involved in the same transaction which was handled by the advocate who now is acting for one of the parties in a law suit based on the very transaction; and the feeling is normally expressed in an application for disqualification of the counsel concerned in the hope it will pass for a serious restriction to legal representation. But the law has set standards and benchmarks which must be applied in denying a person of legal representation of choice; the decision must not be oblivious of the centrality of the right to legal representation in *the constitution* as the over-arching hanger; equally, it should not be removed from reach to the sensitive fiduciary relation between an advocate and his clients, which in transactions such as these, would prevent the advocate from using



the privileged information he received in the employ of the parties, to the detriment of one party or to the advantage of the other; it must realize that the advocate has a duty not only to himself or his client in the suit, but to the opponent and the cause of justice; but in all these, it must be convinced that real mischief and real prejudice would result unless the advocate is prevented from acting in the matter for the opponent. The real questions then become: Is the testimony of the advocate relevant, material or necessary to the issues in controversy? Or is there other evidence which will serve the same purpose as the evidence by counsel? Eventually, each case must be decided on its own merits, to see if real mischief and real prejudice will result in the circumstances of the case. And in applying the test, if the argument on disqualification becomes feeble and inconsistent with causing real mischief and prejudice, then a disqualification of counsel will not be ordered.

(23) In line with the above rendition, I do not think there was any possibility of real prejudice being occasioned to the applicant by representation of the 1<sup>st</sup> respondent by the said firm of advocates. And I so hold fully aware of the applicant's desire to call them as witnesses- and I suppose only the advocate who witnessed and or drafted the agreement was to be the witness. The rules even allow such advocate to testify on matters which are not contentious.”

24. While I place reliance on the above cited authorities and being persuaded by the courts' reasoning, it is my view that an advocate will be deemed to be acting in conflict of interest when serving or attempting to serve two or more interests. Indeed, it is clear that the said law firm has acted for the plaintiff/applicant previously in a non-contentious matter, and in this particular case, the alleged apparent conflict of interest has not been demonstrated. The said law firm appears to have acted for the respective parties in separate transactions which to my mind, does not expressly show conflict. More importantly, the deed of settlement dated 29<sup>th</sup> July, 2024 which is contested and said to be drawn by Flora Mweseli has not been disputed. In my view, and during the hearing, Flora Mweseli, the learned counsel will be better placed to testify.
25. Having carefully considered the arguments by the respective parties, it is my view that the plaintiff/applicant has not established the fact that there existed a long-standing relationship between the law firm and the plaintiff/applicant's family that would sufficiently demonstrate the apparent conflict of interest. For that reason, I see no prejudice to be suffered by the plaintiff/applicant. The upshot of the above is that the notice of motion dated 16<sup>th</sup> July, 2025 is for dismissal. Costs shall be in the cause.

Orders accordingly.

**DATED, SIGNED & DELIVERED VIRTUALLY THIS 27<sup>TH</sup> DAY OF OCTOBER, 2025.**

**HON. MBOGO C.G.**

**JUDGE**

**27/10/2025.**

In the presence of:

Mr. Benson Agunga - Court assistant

Ms. Gitau holding brief for Mr. Wandabwa for the 1<sup>st</sup> Defendant/Respondent

Ms. Agasha holding brief for Mr. Ogolla for the Plaintiff/Applicant

