



**Musyoki v Kenya Airways Limited (Cause E644 of 2021)
[2025] KEELRC 3019 (KLR) (30 October 2025) (Ruling)**

Neutral citation: [2025] KEELRC 3019 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E644 OF 2021
BOM MANANI, J
OCTOBER 30, 2025**

BETWEEN

MORRIS MUSYOKI CLAIMANT

AND

KENYA AIRWAYS LIMITED RESPONDENT

RULING

1. The application before court is dated 9th February 2025. Through it, the Claimant seeks to disqualify the Firm of Gikera & Vadgama Advocates from representing the Respondent in the cause allegedly because the said lawyers have committed various malpractices whilst handling the case on behalf of the Respondent.
2. The Claimant accuses the lawyers of dragging the suit by deliberately delaying to take certain steps in the cause when they are required to. He also accuses the lawyers of having colluded with the Respondent to “sneak” one Diana Kaeni, allegedly from the lawyers’ office into the Respondent’s office to manipulate records which he contends are critical to resolving the dispute between the parties.
3. In what appears to be a strange twist in the Claimant’s narrative, he also asserts that Diana Kaeni appointed Gikera & Vadgama Advocates to represent the Respondent in the cause after she crossed over from the Law Firm to the Respondent. It sounds bizarre for the Claimant to assert that M/ S Gikera & Vadgama Advocates “sneaked” Diana into the Respondent’s employment in order to manipulate his employment records and at the same time assert that it is Diana Kaeni who influenced the appointment of the Law Firm onto the Respondent’s panel whilst she was working for the Respondent.
4. The Claimant also makes a series of other accusations against the lawyer who has personal conduct of the suit on behalf of the Respondent from M/S Gikera & Vadgama Advocates. He accuses her of inter alia: holding secret meetings with the mediator who was hearing the dispute between the parties; and



dictating the course of the mediation process. It is noteworthy that he has made these accusations in the body of the application without the benefit of affidavit evidence to back them.

5. The Claimant makes other requests regarding, inter alia, directing the Respondent to: produce before court his personal file; produce the investigation report by the Director of Criminal Investigations on one Maingi Musyoka; and produce employment records for the said Maingi Musyoka.
6. The application is opposed by the Respondent. It (the Respondent) has filed a replying affidavit dated 19th March 2025 through its lawyers.
7. The Respondent contends that it has a constitutional right to be represented by a lawyer of its choice. It contends that the Claimant's application seeks to unjustly interfere with this right with the consequence that its (the Respondent's) right to fair trial will be affected.
8. The Respondent contends that the Claimant has not presented to court evidence of conflict of interest against its lawyers to warrant the request. It contends that mere discomfort with opposing counsel should not be a basis to disqualify the lawyer.
9. The Respondent avers that an advocate should not be disqualified from participating in a matter unless there is compelling evidence of professional misconduct or conflict of interest on his part. It contends that the Claimant has not provided evidence to speak to the foregoing.
10. The Respondent avers that the Claimant has not demonstrated that his case has been prejudiced by the appearance of its lawyers in the cause. It avers that there is no evidence that the continued appearance of the lawyers in the cause will result in bias against the Claimant.
11. The Respondent avers that the instant application is intended to frustrate the expeditious disposal of the dispute. It invites the court to take note of the several applications which the Claimant has lodged in the suit in respect of the same or similar issues as testimony of his intention to derail conclusion of the case.

Analysis

12. In the case of *Kiura t/a Wasonga Kimakia & Associates Advocates v Njuki & another* [2025] KEHC 1686 (KLR), the court held that an advocate can only be disqualified from representing a party in a dispute if it is demonstrated that he is a potential witness or that he has a conflict of interest arising from the relation he has had with the parties to the suit. Similar sentiments were expressed in the case of *Singh v Mutua & 2 others* [2024] KEHC 4868 (KLR).
13. It is not enough for one to aver that there is misconduct on the part of counsel which disentitles him from representing a party. Such assertion must be backed by acceptable evidence, usually in the form of a sworn statement or affidavit.
14. Although the Claimant accuses the Respondent's lawyers of various malpractices, he did not swear an affidavit to back his claims. Absent a statement on oath to back the claims, the court finds that they (the claims) remain unsubstantiated.
15. As was emphasized in the decisions quoted earlier in the ruling, a party to a suit has a constitutional right to be represented by a lawyer of his choice. This right cannot be taken away on the basis of unproven allegations against the lawyer (*Singh v Mutua & 2 others* [2024] KEHC 4868 (KLR)).
16. As was further emphasized in *David M Mereka t/a Mereka & Co Advocates v County Government of Nairobi* [2021] KEHC 13448 (KLR), removal of an advocate from representing a party in proceedings is not to be taken lightly as the party has a constitutional right to be represented by the advocate. It



(removal of counsel) is an extraordinary and drastic remedy which should be contemplated only in the most extraordinary circumstances.

17. In the instant case, the Claimant has not pointed to any extraordinary circumstances that would entitle the court to bar the Respondent's advocates from acting in the cause. This is particularly so in view of the fact that the Claimant avoided to swear an affidavit to back his accusations against the said lawyers.

Determination

18. The upshot is that the court finds that the application dated 9th February 2025 is not merited.
19. Consequently, it is disallowed.
20. Costs of the application are granted to the Respondent.

DATED, SIGNED AND DELIVERED ON THE 30TH DAY OF OCTOBER, 2025

B. O. M. MANANI

JUDGE

In the presence of:

..... for the Claimant

.....for the Respondent

ORDER

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M MANANI

