

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KISUMU**  
**ELC SUIT NO.374 OF 2015(FORMERLY HCC NO. 63 OF**  
**2006)**

**PAUL ONYANGO**  
**SULE.....PLAINTIFF**

**VERSUS**

**CHARANJIT HAYER.....1<sup>ST</sup>**  
**DEFENDANT**

**GURBUX SINGH HAYER.....2<sup>ND</sup>**  
**DEFENDANT**

**AND**

**PASCAL MATENGO SULE**  
**(Suing as the Legal Representative of the estate**  
**of MICHAEL SULE OBUOLA, deceased).....**  
**APPLICANT**

**RULING**

**Background**

The Plaintiff brought this suit in the High Court through a plaint dated 2<sup>nd</sup> May 2006 seeking the following reliefs;

1. An injunction restraining the Defendants from using all that parcel of land known as Kisumu/Ojola/1767.
2. A declaration that the agreement of sale dated 23<sup>rd</sup> March 1989 in respect of the parcels of land known as Kisumu/Ojola/1766 and Kisumu/Ojola/1767 was void since the purported sellers of the properties to the Defendants were not the registered owners thereof.
3. Costs of the suit

The Plaintiff claimed that the suit properties were registered in the name of Michael Sule Obuola, deceased, who died on 17<sup>th</sup> March 1986. The Plaintiff averred that the Defendants purported to purchase the suit properties from persons who were not the owners thereof on 23<sup>rd</sup> March 1989, after the death of Michael Sule Obuola (hereinafter referred to as the “deceased”). The 1<sup>st</sup> Defendant filed a defence on 25<sup>th</sup> August 2006 in which he denied the Plaintiff’s claim in its entirety. The 1<sup>st</sup> Defendant urged the court to dismiss the suit. The 2<sup>nd</sup> Defendant did not enter an appearance.

On 15<sup>th</sup> October 2009, the Plaintiff and the 1<sup>st</sup> Defendant entered into a written consent of the same date settling the suit on terms, which was filed in court on 13<sup>th</sup> July 2010. The consent was signed by the Plaintiff in person and the firm of Ouma Njoga & Company Advocates for the 1<sup>st</sup> Defendant. The consent was recorded and endorsed by the Deputy Registrar as an order of the court on 8<sup>th</sup> November 2011. The decree extracted from the consent on 13<sup>th</sup> December 2012, provided that the estate of the deceased, Michael Sule Obuola, had relinquished all its claim to the suit properties. The decree provided further that the Defendants remained the owners of

the suit properties, and that the estate of the deceased, represented by the Plaintiff as the legal representative of the estate, was estopped from challenging the legality of the titles held by the Defendants in respect of the suit properties.

### **The application challenging the consent**

On 3<sup>rd</sup> March 2025, the Applicant, Pascal Matengo Sule (hereinafter referred to only as “the Applicant”), filed an application dated 20<sup>th</sup> January 2025 seeking an order for the review and setting aside of the consent judgment entered on 8<sup>th</sup> August 2011 and the decree extracted therefrom on 13<sup>th</sup> December 2012, and all other subsequent proceedings and orders. The Applicant also sought the costs of the application. The application was brought on several grounds, the main one being that the Plaintiff had no legal capacity to institute this suit and enter into a consent judgment binding the estate of the deceased, Michael Sule Obuola. The Applicant contended that the purported consent judgment was void. In response to the application, the firm of Onsongo & Company Advocates filed a memorandum of appearance on behalf of the Defendants and grounds of opposition to the application.

## **The application before the court**

What is now before me is an application brought by the Applicant seeking an order that Richard Onsongo, Advocate of Onsongo and Company Advocates, be barred from representing the Defendants in this suit on account of conflict of interest and fraudulent conduct, and all documents filed by him be expunged from the record. The Applicant contended that Richard Onsongo, Advocate, acted for the Plaintiff in this matter and participated in the recording of the consent judgment in favour of the Defendants, which the Applicant had sought to set aside. The Applicant averred that Richard Onsongo, Advocate, was privy to the facts that gave rise to the impugned consent. The Applicant averred that, having acted for the Plaintiff, Richard Onsongo, Advocate, could not act for the Defendants in the same matter. The Applicant averred that Richard Onsongo, Advocate, had a professional duty not to act in a situation of conflict of interest. The Applicant averred that Richard Onsongo, Advocate, was a potential witness in the matter, and his continued appearance in the matter was in breach of Rule 8 of the Advocates (Practice) Rules. The Applicant averred that he would be prejudiced if Richard Onsongo, Advocate, used the

confidential information in his possession while acting for the Defendants in the matter.

The application was opposed by the Defendants through a replying affidavit sworn by Richard Onsongo, Advocate, on 4<sup>th</sup> March 2025. Mr. Onsongo averred that he had never acted for the Plaintiff, Paul Onyango Sule, in this suit. He stated that this fact was clear from the record. He stated that when the matter came up for notice to show cause on 30<sup>th</sup> March 2017, he informed the court that he was not acting for the Plaintiff in the matter. He stated that when the matter came up for a notice to show cause, the matter had already been settled on 8<sup>th</sup> August 2010 through a consent entered into between the Plaintiff in person and the firm of advocates then acting for the Defendants, Ouma Njoga & Company Advocates. He stated that it could not have been possible for him to have taken instructions from the Plaintiff to act for him on 7<sup>th</sup> September 2013 in a matter that was settled on 8<sup>th</sup> August 2010. He stated that he did not participate in the preparation and signing of the said consent.

The application was heard by way of written submissions. The Applicant filed submissions dated 26<sup>th</sup> September 2025, while the Defendants filed submissions dated 5<sup>th</sup> November 2025.

### **Analysis and Determination**

I have considered the application together with the supporting affidavit. I have also considered the replying affidavit by the Defendants. Finally, I have considered the submissions by both parties. Rule 8 of the Advocates (Practice) Rules (Legal Notice 19 of 1967) provides 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.”**

Standard No. 92 of the Law Society of Kenya Code of Standards of Professional Practice and Ethical Conduct provides as follows:

**“Conflict of interest:**

**92. SOPPEC-6: The Advocate shall not advise or represent both sides of a dispute and shall not act or continue to act in a matter when there is a conflicting interest, unless he/she makes adequate disclosure to both clients and obtains their consent”.**

In Murgor & Murgor Advocates v. Kenya Pipeline Co. Ltd [2021] eKLR, the Court stated that:

**“41. (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.”**

What I need to determine in this application is whether it would be in the interest of justice for the firm of Onsongo & Company Advocates to act for the Defendants in this matter. What I can establish from the record is the following: The Plaintiff brought this suit in person on 3<sup>rd</sup> May 2006. On 13<sup>th</sup> July 2010, the firm of Ouma Njoga & Company Advocates, which was on record in the matter for the 1<sup>st</sup> Defendant, filed a consent letter in court signed by the said firm and the Plaintiff in person, settling the

matter. As mentioned earlier in the ruling, the consent was adopted as an order of the court on 8<sup>th</sup> August 2011, and a decree was extracted and issued on 13<sup>th</sup> December 2012.

After the suit had been settled and a decree issued, the firm of Onsongo & Company Advocates filed a Notice of Appointment of Advocates dated 7<sup>th</sup> September 2013 on 10<sup>th</sup> September 2013 in which the firm indicated that it had been appointed by the Plaintiff to act for him in the suit. On 17<sup>th</sup> September 2013, the firm of Onsongo & Company Advocates wrote to the Deputy Registrar requesting that the matter be fixed for hearing. On 19<sup>th</sup> September 2013, Edwin of Onsongo & Company Advocates appeared at the court registry and fixed the matter for hearing on 14<sup>th</sup> November 2013. It is unclear from the record what transpired on 14<sup>th</sup> November 2013 when the matter was scheduled for a hearing. There was no activity in the matter between 14<sup>th</sup> November 2013 and 2<sup>nd</sup> March 2017, when, without realising that the suit had been compromised and marked as settled 6 years earlier, the Deputy Registrar issued a notice to show cause why the suit should not be dismissed for want of prosecution. The notice to show cause was served upon Onsongo & Company Advocates, which was on record for the

Plaintiff, and Ouma Njoga & Company Advocates, which was on record for the 1<sup>st</sup> Defendant. When the notice to show cause came up for hearing on 30<sup>th</sup> March 2017, the court erroneously dismissed the suit, which had already been marked as settled. An advocate from the firm of Onsongo & Company Advocates, who appeared for the notice to show cause, told the court that: *"We do not have the file and details of this case, and it may be dismissed."*

From the record before me, I am satisfied that the firm of Onsongo & Company Advocates was on record for the Plaintiff in this matter from 10<sup>th</sup> September 2013 until 13<sup>th</sup> November 2017, when the firm of Omondi, Abande & Company Advocates filed a Notice of Appointment of Advocates and came on record for the Plaintiff. In view of the history of this matter that I have narrated above, it is unclear to this court under what circumstances Onsongo & Company Advocates came on record in this matter for the Plaintiff and for what purpose. The situation has not been helped by the fact that Onsongo & Company Advocates have denied having come on record in the matter, despite the evidence on record showing without any doubt that they actually came on record and even attempted to

list the matter for hearing. The other concern is that the Plaintiff, for whom the firm of Onsongo & Company Advocates was said to be acting, has neither denied nor confirmed that Onsongo & Company Advocates acted for him in the matter. The person claiming that Onsongo & Company Advocates acted for the Plaintiff is the Applicant herein, who is the Plaintiff's brother, and from his affidavit in support of the application, he is to a large extent relying on the information on the court record.

This being a court of record, it can only rely on the information before it. As stated earlier, I am satisfied that the firm of Onsongo & Company Advocates acted for the Plaintiff in this matter between 10<sup>th</sup> September 2013 and 13<sup>th</sup> November 2017, when another law firm took over the conduct of the matter on behalf of the Plaintiff. Although the Plaintiff for whom Onsongo & Company Advocates is said to have acted has not objected to the firm appearing in the same matter for the Defendants, I am of the view that advocates are officers of the court, and court proceedings must be conducted in an orderly, professional, and ethical manner. The Advocates' Code of Standards of Professional Practice and Ethical Conduct bars an advocate

from acting for both parties in a dispute. The Applicant's application for review of the consent judgment entered herein is pending hearing. The Plaintiff is yet to respond to the same. Whether he will respond to the application or not is unknown. The firm of Onsongo & Company Advocates could not have come on record in this matter for the Plaintiff on 10<sup>th</sup> September 2013 without the Plaintiff's instructions. In a contentious matter like the present one, an advocate who has taken instructions and come on record as acting for a party cannot switch sides and take over the conduct of the opposite party's case. Although the Plaintiff, who was initially represented by Onsongo & Company Advocates, has not objected to the firm acting for the Defendants, I am of the view that it would not be ethically sound for the firm to act for the Defendants in the matter, having acted in the same matter for the Plaintiff. With a view to giving effect to the Advocates' Code of Standards of Professional Practice and Ethical Conduct, and in the wider interest of justice, taking into account the nature of the dispute now before the court, I will allow the Applicant's application.

## **Conclusion**

In conclusion, the Notice of Motion application dated 10th February 2025 is allowed on the following terms;

1. The firm of Onsongo and Company Advocates is barred from representing the 1<sup>st</sup> and 2<sup>nd</sup> Defendants in this suit due to a conflict of interest.
2. All the documents filed by the said firm of advocates in this suit in response to the Applicant's Notice of Motion application dated 20<sup>th</sup> January 2025 are expunged from the court record.
3. The Defendants, CHARANJIT SINGH HAYER and GURBUX SINGH HAYER, are at liberty to instruct another firm of advocates to represent them in this matter.
4. The order barring the firm of Onsongo and Company Advocates from representing CHARANJIT SINGH HAYER and GURBUX SINGH HAYER is limited to this suit.
5. Each party shall bear its costs of the application.

**Written and signed at Kisumu by**  
**S. OKONG'O**  
**JUDGE**

**Delivered, dated and countersigned at Kisumu on this  
17<sup>th</sup> day of February 2026**

**E.ASATI**

**JUDGE**

Ruling delivered virtually through Microsoft Teams Video Platform in the presence of:

for the Applicant

for the Defendants

-Court Assistant