



Karinga & another (Suing as the legal representatives of the Estate of the Late John Karinga Kabiru) v Kabiru (Sued as the legal representative of the Estate of the Late Peter Githu Kabiru) (Environmental and Land Originating Summons E010 of 2025) [2026] KEELC 2081 (KLR) (16 April 2026) (Ruling)

Neutral citation: [2026] KEELC 2081 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E010 OF 2025**

JM KAMAU, J

APRIL 16, 2026

BETWEEN

ANGELA MIRIGO KARINGA & MARTIN KABIRU KARINGA (SUING AS THE LEGAL REPRESENTATIVES OF THE ESTATE OF THE LATE JOHN KARINGA KABIRU) PLAINTIFF

AND

BETH WAKURAYA KABIRU (SUED AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF THE LATE PETER GITHU KABIRU) DEFENDANT

RULING

1. The Originating summons herein dated 21/8/2025 by Angela Mirigo Karinga and Martin Kabiru Karinga suing as the legal representatives of the Estate of the late John Karinga Kabiru is for adverse possession as an alternative for the prayers of a Declaration that the late Peter Githu Kabiru held a portion of 8 Acres out of plot No. 27 in trust for the Estate of John Karinga Kabiru. There is another prayer for the dissolution of the said Trust, excision and transfer of the said 8 Acres into the joint names of the Plaintiffs as the legal representatives of the Estate of the late John Karinga Kabiru.
2. The suit was filed against Beth Wakuraya Kibiru who was sued as the legal representative of the Estate of the late Peter Githu Kabiru. It was filed by Gakuhi Chege & Associates Advocates for the Plaintiffs and signed by C. G. Chege. Mireri Nyokabi & Company Advocates filed the Memorandum of Appearance on behalf of Beth Wakuraya Kabiru, the Defendant on 15/9/2025.
3. Subsequently, the Defendant filed an Application dated 6/11/2025 where she said that Peter Githu Kabiru was being represented by the firm of Gakuhi Chege and associates in the process of allotment, sub-division and transfer. And when a dispute arose between Peter Githu Kabiru and the purchasers



- of some undivided portions of the property, the purchasers filed a suit against Peter Githui Kabiru who was represented by the firm of Gakuhi Chege and Associates Advocates.
4. In the current suit, the Plaintiffs allege that their father was a purchaser of a portion of the original property plot No. 27 (now 1201) which is identified as plot No. 2446.
 5. Accordingly, the Defendant opposes the representation of the firm of Gakuhi Chege for the Plaintiffs on the basis that there is conflict of interest, real and not only perceived on account of a previous relationship between the said firm and the Respondent.
 6. In response to this Application, Mr Gakuhi Chege denied to have ever had a professional relationship with the Defendant and that in the alternative even if he did, such a relationship cannot be a source of conflict since John Karinga, represented by the Plaintiffs was never a party to the transaction and Court proceedings. Mr Chege also avers that the Plaintiff has a constitutional right to be represented by an Advocate of his choice.
 7. In the case of William Audi Odede & Another vs John Vier & Another Court of Appeal Civil Application No.NA1 360 of 2004 (KSM33/04), the Court succinctly stated that;

“it is not the business of the Courts to tell litigants which Advocate should or should not act in a particular matter.”
 8. Each party to litigation has a constitutional right (expressed or implied) to choose his/her own Advocate. As observed by the Court of Appeal in Delphis Bank Limited vs Channan Singh Chatthe and 6 Others (2005) IKLR, the right to a legal representative or Advocate of his choice is a litigant’s most valued constitutional right. Unless it is shown to a court of law that the interests of justice would not be served if a particular Advocate were allowed to act in a matter, the parties must be allowed to choose their own counsel. There is otherwise no general rule that an Advocate cannot act for one party in a matter and then act for the opposite party in subsequent litigation.
 9. The Rule is however not absolute. Exceptions must be made. Each case should however be decided on its own merits and its own peculiar facts. The Court ought to also interrogate further to determine whether the aggrieved Applicant’s Application has merit or it is just being made -
 1. to derail the proceedings one way or the other.
 2. to defeat justice.
 3. to deliberately deprive the opponent of the services of an Advocate of their choice or in other words is a technical maneuver by the Applicant to disqualify the opposing party’s Advocate from representing that party.
 4. to settle personal scores.
 5. With the aim of abusing the Judicial system or is an opportunistic abuse of the Rule by the Applicant
 10. As held in Rakusen vs Ellis Munday and Clarke (1912) 1 Ch.831(1911-1913) ALL ER Rep 813, the Court has to be satisfied that real mischief and real prejudice will, in all human probability, result if the Advocate is allowed to act. As a general rule, the Court will not interfere unless there be a case where mischief is rightly anticipated.
 11. On the other hand, it was held by the Court of Appeal in the case of Kings Woolen Ltd (Formerly known s Manchester Suiting Division Ltd)& Another vs M/s Kaplan & Straton Advocate s (1993)KLR 273 that once a retainer is established, then the general principle is that an Advocate



should not accept any instructions to act for two or more clients where there is a conflict of interest between those clients. It is important to however note that retainer or proof of employment alone will not amount to conflict of interest. There must be a demonstration of the existence of information which could prejudice the party seeking disqualification. The case of Nairobi HCCC No. 570 Of 2011 (Milimani), British –American Investments Co. (K) Ltd -Vs.- Njomaitha Investments Ltd & Another is applicable to the effect that:

.....where a party asserts that conflict of interest exists, he must provide sufficient evidence to demonstrate that such conflict of interest indeed exists. It is incumbent upon such party wishing to disqualify an advocate or a firm of advocates from acting for a particular party to show that it has suffered or will suffer prejudice if such an advocate or firm of advocates continues to so act for that party. Mere suspicion, apprehension of a possible conflict of interest or fear of prejudice cannot be a basis to stop an advocate from acting on behalf of a party.....”

12. Although the Defendant does not bring out this point clearly, there is a nexus between the interests of the Defendant and those of the late Peter Githu Kabiru and this is what the Defendant fears. The information in the ambit of the firm of Gakuhi Chege & Associates Advocates obtained from the late Peter Githu Kabiru would be lethal to the Defendant’s case and it is only fair that the firm of Gakuhi Chege & Associates Advocates graciously donates her client to a different firm of Advocates. I hope the endowment of the client will not be intimately and inextricably intertwined with the confidentiality.
13. I am of the view that the Applicant’s fears are justified as it is indeed undisputed that the firm of Gakuhi Chege & Associates Advocates was retained by the late Peter Githu Kabiru to act in Nyandarua Land Disputes Tribunal case. It is therefore important that the firm of Gakuhi Chege & Associates Advocates refrains from representing the Plaintiff in this matter. The Plaintiff is at liberty to engage any other Counsel/firm for representation.
14. This Court finds the Application as made by the Applicant is merited. Allowing the Plaintiffs’ representation by the firm of Gakuhi Chege & Associates Advocates in the matter portends a likely conflict of interest which inadvertently will result in a breach of duty the “firm” owes not only to the Defendant but also as well as to the cause of justice. Thrusting the essential core of the grounds advanced for disqualification, keenly looking at the issue in dispute, considering the facts of the case and placing all that on the scale of the threshold of the law applicable, I find the Applicant’s Application to be merited and consistent with the concern that the firm’s continued representation of the Plaintiffs will likely cause a real mischief and real prejudice to other parties herein. Effectively, the court orders that the firm of Gakuhi Chege & Associates Advocates be hereby disqualified from representing the Plaintiffs in this matter. The Plaintiffs are at liberty to engage any other Counsel/firm for representation.
15. The upshot of the above is that the Application hereby succeeds, and it is hereby allowed as prayed.

RULING DATED, SIGNED AND DELIVERED AT NYANDARUA THIS 16TH DAY OF APRIL, 2026.

MUGO KAMAU

JUDGE

In the Presence of: -

Court Assistant: Samson.

Plaintiff’s Counsel: Mr. Gakuhi Chege.



Defendants' Counsel: Ms. Ng'ang'a.

