



REPUBLIC OF KENYA



KENYA LAW
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**Moriasi v Kimati & 3 others (Land Case E021 of 2025)
[2026] KEELC 2202 (KLR) (22 April 2026) (Ruling)**

Neutral citation: [2026] KEELC 2202 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA
LAND CASE E021 OF 2025
DO OHUNGO, J
APRIL 22, 2026**

BETWEEN

JOHN NYAMBOGA MORIASI PLAINTIFF

AND

ANGELINA CHEPNGETICH KIMATI 1ST DEFENDANT

KENNEDY MOKUA MOKO 2ND DEFENDANT

AND

REGISTRAR OF LANDS NYAMIRA COUNTY 1ST INTERESTED PARTY

HONOURABLE ATTORNEY GENERAL 2ND INTERESTED PARTY

RULING

1. By Notice of Motion dated 22nd October 2025, the Plaintiff is seeking the following orders:
 1. That Mr. Mogaka Wilkins Ochoki and the Firm of Ochoki & Advocates appearing for the 1st Respondent/Defendant in this matter be ordered to disqualify itself and cease to appear or continue to appear for the 1st Respondent/Defendant herein.
 2. That this honorable court do stay the representation by the Firm of Ochoki & Advocates for the 1st Respondent/Defendant in this suit;
 3. That the pleadings done and or prepared by the Mr. Mogaka Wilkins Ochoki and the said Firm of Ochoki & Advocates with respect to this matter be struck out from the face of record before this Honourable Court.
 4. That this Honourable Court be pleased to make any other or further consequential orders that it may deem just and fit to grant.



5. Cost of this application be provided for.
2. The application is based on the grounds listed on its face and is supported by an affidavit sworn by the Plaintiff/Applicant. He deposed that at the commencement of this matter, he and the 1st Defendant instructed the firm of Ochoki & Company Advocates through Mr. Mogaka Wilkins Ochoki to act for them and that in the course of the instructions and representation, Mr. Ochoki and the firm obtained substantial particulars of documents which they continue to hold. He annexed copies of receipts issued by the firm of Ochoki & Company Advocates.
3. He added that he supplied Mr Ochoki with confidential information relevant to the matter and that until the filing of this case, he understood that Mr. Ochoki was still his advocate since he represented them in Kisii ELC No. 467 of 2015 against the 2nd Defendant. That his files were still in the chambers of Ochoki & Company Advocates at the commencement of the present case and that the said firm entered appearance for the 1st Defendant without withdrawing the instructions.
4. The Plaintiff went on to depose that the continued representation of the 1st Defendant by Mr Ochoki and the firm of Ochoki & Company Advocates was in conflict of interest and caused a substantial risk to his interest in the matter. He added that he stood to suffer prejudice if the advocate and the firm were allowed to act for the 1st Defendant and that it was in the interest of justice that he be accorded a neutral ground without tactical advantage to any party.
5. The 1st Defendant opposed the application through a replying affidavit sworn by Mr. Wilkins Ochoki Advocate. He deposed that the Plaintiff/Applicant's allegation that his firm acted for him in Kisii ELC No. 467 of 2015 were false and made in bad faith. That the said case was commenced by the firm of Moturi Mbeche & Associates in the year 2015 and that the firm of Ochoki & Company Advocates was instructed by the 1st Defendant herein who was the Plaintiff in that matter later in April 2016.
6. Mr. Ochoki further deposed that the Plaintiff/Applicant was not a party in Kisii ELC No. 467 of 2015 and that the firm did not receive any instructions from him. He added that the 1st Defendant was illiterate and relied on other persons for assistance and that the annexed receipts were issued jointly in the 1st Defendant's and the Plaintiff/Applicant's names by virtue of the Plaintiff/Applicant having physically delivered the payments. He further deposed that there was no advocate-client relationship with the Plaintiff/Applicant and that no conflict of interest whatsoever existed.
7. He further deposed that the application had been filed too late in the day considering that his firm filed Notice of Change of Advocates in this matter on 23rd September 2024 and had subsequently participated in the matter and even filed an application that was heard and determined through ruling delivered on 15th May 2025. He annexed copies of Plaintiff and judgment in Kisii ELC No. 467 of 2015, among other documents.
8. The 2nd Defendant and Interested Parties did not file any response to the application.
9. The application was canvassed through written submissions. The Plaintiff/Applicant filed submissions dated 3rd March 2026 while the 1st Defendant filed submissions dated 20th March 2026.
10. I have carefully considered the application, the affidavits and the submissions. The issues for determination are whether there existed an advocate-client relationship between the Plaintiff/Applicant the firm of Ochoki & Company Advocates in Kisii ELC No. 467 of 2015 and whether the orders sought in the application should issue.
11. The Court of Appeal established the test for disqualification of an advocate in *Delphis Bank Limited v. Channan Singh Chatthe & 6 Others* [2005] eKLR thus:



... 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...

12. The mere fact that an advocate has acted for a party does not necessarily lead to conflict of interest. In *Charles Gitonga Kariuki v Akuisi Farmers Co. Ltd* [2007] eKLR the Court held:

“The fact that an advocate acted for a litigant does not, per se, lead to a situation of conflict of interest. The applicant was required to establish, and present to the court evidence that would persuade the court to reach a conclusion that indeed there was a possibility that a conflict of interest would arise where the advocate is allowed to act for the opposing party against such a litigant...”

13. The Plaintiff/Applicant’s contention is that Mr. Ochoki and the firm of Ochoki & Company Advocates represented him in Kisii ELC No. 467 of 2015. I have perused the copies of the Plaintiff in Kisii ELC No. 467 of 2015. The said case was transferred to Nyamira and became Nyamira ELC No. 30 of 2021. I have also perused the judgment delivered in the case on 30th June 2022.
14. It is manifest that the Plaintiff/Applicant was not a party in Kisii ELC No. 467 of 2015 and Nyamira ELC No. 30 of 2021. His claim that Mr. Ochoki and the firm of Ochoki & Company Advocates represented him in the matter is unsupported by the pleadings and judgment.
15. I have also perused the copies of the receipts which the Plaintiff/Applicant annexed. While both the names of the Plaintiff/Applicant and the 1st Defendant appear in the receipts, I note that Mr Ochoki has explained the circumstances in which the Plaintiff/Applicant’s name was included in the receipts. He was a helper to the 1st Defendant and not the client. He has not filed any affidavit to challenge the explanation offered by Mr Ochoki.
16. Given the foregoing, the Plaintiff/Applicant’s allegations that he instructed Mr. Ochoki and the firm and that they obtained substantial particulars or documents from him do not hold. He has not demonstrated any possibility that a conflict of interest could arise if Mr. Ochoki and the firm continue representing the 1st Defendant. I bear in mind the right to access to justice and that the 1st Defendant is entitled to be represented by an advocate of her choice.
17. I find no merit in Notice of Motion dated 22nd October 2025. I dismiss it with costs to the 1st Defendant.

DATED, SIGNED, AND DELIVERED AT NYAMIRA, THIS 22ND DAY OF APRIL 2026.

D. O. OHUNGO

JUDGE

Delivered in the presence of:

Mr Ondieki for the Plaintiff

Ms Omusi for the 1st Defendant

Ms Omusi holding brief for Ms Gogi for the 2nd Defendant

Mr Ndiritu for the Interested Parties

Court Assistant: B Kerubo

