

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAROK

SUCCESSION CAUSE NO. E012 OF 2024

(CORAM: HON. CHARLES M. KARIUKI – J)

IN THE MATTER OF THE ESTATE OF TEKET OLE PASIANY (DECEASED)

LEMANDUKU OLE MOROMPI.....2ND OBJECTOR/APPLICANT

VERSUS

KIRRINKOL PASIANY..... PETITIONER/RESPONDENT

PASIANY PARSALALA GIDEON..... PETITIONER/RESPONDENT

RULING

28/04/2026

A. INTRODUCTION

- 1) This ruling concerns an interlocutory application arising in Succession Cause No. E012 of 2024 relating to the Estate of the late Teket Ole Pasiany (Deceased). The application has been brought by Lemanduku Ole Morompi, the 2nd Objector/Applicant, against the Petitioners/Respondents, namely Kirrinkol Pasiany and Pasiany Parsalala Gideon.
- 2) The dispute centres on the administration of the estate, particularly the ownership and occupation of land parcels known as CIS MARA/LEMEK/3398 and CIS MARA/LEMEK/3399, which the Applicant claims to have lawfully acquired through

a sale agreement executed in the year 2009. The Applicant challenges the propriety of the ongoing succession proceedings and, more significantly, the continued representation of the Petitioners by the firm of Lelei & Associates Advocates, alleging conflict of interest and breach of professional conduct rules.

B. THE APPLICATION

- 3) Before the Court is a Notice of Motion dated 1st April 2025, brought under Rule 8 of the Advocates (Practice) Rules, Sections 1A, 1B, and 3A of the Civil Procedure Act, Order 40 of the Civil Procedure Rules, and Articles 50(1), 159(2)(e), and 165 of the Constitution.
- 4) The Applicant seeks the following substantive orders:
 - i. The proceedings instituted by Lelei and Associates advocates on behalf of the Petitioners/Respondents be set aside on the grounds of conflict of interest and breach of Rule 8 of the Advocates (Practice) Rules.
 - ii. That Lelei and Associates Advocates, or such other person acting at their behest, be disqualified from acting in this matter.
 - iii. That pending the hearing and determination of this matter, the Honourable Court be pleased to issue an order restraining the Petitioner/Respondents from interfering with, alienating, destroying, encroaching, encroachment and/or attempting to evict the Objector/Applicant from all that property known as CIS MARA/LEMEK/3398 and CIS MARA/LEMEK/3399.
 - iv. That the Honourable Court be pleased to strike out the entire pleadings.
 - v. That the Respondents bear the costs of this application.

- 5) The application is premised because the said firm of advocates previously acted for both the Applicant and members of the Deceased's estate in a transaction involving the suit property and is therefore conflicted, likely to be called as a witness, and incapable of acting impartially in the present proceedings.

C. SUPPORTING AFFIDAVIT

- 6) The application is supported by the affidavit of Lemanduku Ole Morompi, sworn on 1st April 2025.
- 7) The Applicant depones that he is a purchaser and beneficiary of the estate of the deceased, having entered into a sale agreement dated 22nd December 2009 for the purchase of a portion of land originally comprised in CIS-MARA/LEMEK/897. He avers that the consideration of Kshs. 150,000 was paid in full, and the transaction culminated in the issuance of title deeds for parcels CIS MARA/LEMEK/3398 and 3399.
- 8) It is his case that the transaction was facilitated and formalised by the firm of Lelei & Associates Advocates, who acted for both the vendor and purchaser, verified the status of the property as part of the estate, and confirmed compliance with applicable legal requirements.
- 9) The Applicant further avers that he has been in open, continuous, and uninterrupted possession of the said parcels for over fifteen (15) years. He contends that the beneficiaries of the estate have now initiated succession proceedings without involving him, despite his proprietary interest in the estate property.

- 10) He deposes that the same firm of advocates that acted in the transaction now represents the Petitioners in the present succession proceedings and has taken a position adverse to his interests. He asserts that this creates a clear conflict of interest, particularly because the advocate is likely to be called a material witness regarding the transaction.
- 11) The Applicant further states that the continued participation of the said advocates violates Rule 8 of the Advocates (Practice) Rules, infringes on his right to a fair hearing under Article 50(1) of the Constitution, and undermines the integrity of the proceedings.
- 12) He also alleges that the Petitioners have threatened eviction and interference with his property and that, unless restrained, he stands to suffer irreparable harm. He therefore urges the Court to grant the orders sought in the interest of justice.

D. REPLYING AFFIDAVIT

- 13) The application is opposed through a replying affidavit by Kirrinkol Pasianny, sworn on 11th May 2025, the 1st Petitioner/Respondent, on his own behalf and on behalf of the 2nd Petitioner.
- 14) The Respondent deposes that he is the son of the deceased, who died on 10th June 2001, and that the deceased was the registered proprietor of land parcel CIS-MARA/LEMEK/897, having been allocated the same by Lemek Group Ranch.
- 15) He avers that after the death of the deceased, and before the institution of succession proceedings, one of the beneficiaries unlawfully procured the title deed and irregularly subdivided the property into several portions, including parcels 3397,

- 3398, 3399, 3400, and 3401, which were subsequently transferred to third parties, including the Applicant.
- 16) The Respondent contends that all such subdivisions, sales, and transfers were illegal, null, and void ab initio, as they were undertaken without letters of administration, in contravention of Section 45 of the Law of Succession Act, which prohibits intermeddling with a deceased's estate.
- 17) He further avers that some of the alleged vendors, including one Ngakuya Ole Pasiyany, are unknown to the family and were not beneficiaries of the estate, thereby rendering the purported sale agreements invalid.
- 18) On the issue of conflict of interest, the Respondent maintains that the advocates who prepared the sale agreement were not involved in the subsequent subdivision and transfer of the land and therefore cannot be disqualified. He contends that the issue raised does not affect the merits of the succession cause.
- 19) The Respondent denies any intention to evict or interfere with the Applicant's possession and asserts that no acts have been undertaken to warrant injunctive relief. Instead, he accuses the Objectors of instigating criminal proceedings against the Petitioners in relation to the same property.
- 20) He further deposes that the application is made in bad faith, that the Applicant does not come to court with clean hands, and that the titles held by the Applicant are tainted with illegality and fraud.
- 21) He urges the Court to dismiss the application with costs, maintaining that it is devoid of merit and intended to obstruct the lawful administration of the estate.

E. SUBMISSIONS.

22) **The Objector/Applicant's Submissions**

23) The Objector/Applicant submits that the application is anchored on the alleged conflict of interest arising from the participation of the firm of Lelei & Associates Advocates, which previously acted for both the Applicant and a beneficiary of the estate in a 2009 land transaction involving the suit property, then known as CIS MARA/LEMEK/897. It is contended that the firm prepared and attested the sale agreement, facilitated the transaction, and thereby acquired material knowledge, placing it in a position where it is likely to be called a witness. The Applicant argues that the firm's continued representation of the Petitioners/Respondents in the present succession proceedings—where the same transaction is in issue—amounts to a clear conflict of interest contrary to Rule 8 of the Advocates (Practice) Rules.

24) Relying on **King Woollen Mills Ltd & Another v M/s Kaplan & Stratton Advocates [1993] eKLR**, the Applicant submits that an advocate who has acted for both parties in a transaction cannot subsequently represent one party against the other in litigation arising from that transaction, due to the fiduciary duty of confidentiality and loyalty owed to former clients. Further reliance is placed on **Delphis Bank Limited v Channan Singh Chatthe & 6 Others [2005] eKLR**, where the Court held that the test is whether real mischief or prejudice is likely to result from continued representation. The Applicant contends that such prejudice is inevitable in the present case.

25) On the right to a fair hearing, the Applicant invokes Article 50(1) of the Constitution, arguing that the continued participation of the said advocates undermines the integrity and impartiality of the proceedings. The Applicant cites **Uhuru Highway**

- Development Ltd v Central Bank of Kenya & 2 Others [2002] 2 EA 654** for the principle that justice must not only be done but must be seen to be done, and submits that a reasonable apprehension of bias arises where an advocate acts in a matter in which he previously participated.
- 26) The Applicant further submits that the Court has inherent jurisdiction under Section 3A of the Civil Procedure Act to prevent abuse of its process, and that the continued involvement of a conflicted advocate renders the proceedings procedurally defective. In this regard, reliance is placed on **Muchanga Investments Ltd v Safaris Unlimited (Africa) Ltd & 2 Others [2009] eKLR**, in which the Court emphasized the duty to guard against the abuse of court process.
- 27) On the prayer for injunctive relief, the Applicant submits that he has satisfied the principles set out in **Giella v Cassman Brown & Co. Ltd [1973] EA 358**, having established a prima facie case through his registered title and long occupation of the suit property, the likelihood of irreparable harm through threatened eviction and interference, and that the balance of convenience favors preservation of the status quo.
- 28) In conclusion, the Objector/Applicant urges the Court to find that the continued participation of Lelei & Associates Advocates is improper, prejudicial, and unconstitutional, and to consequently disqualify the firm, strike out the pleadings filed, grant injunctive relief, and award costs of the application.
- 29) **The petitioners/respondents' submissions.**
- 30) The Petitioners/Respondents oppose the Objector's application dated 1st April 2025 on the basis that it is legally untenable, misconceived, and aimed at sanitizing an

unlawful acquisition of estate property. They contend that the deceased, Teket Ole Pasiany, died intestate on 10th June 2001 as the registered proprietor of land parcel Cis-Mara/Lemek/897, and that no lawful succession process had been undertaken before the subdivision and transfer of the said property. It is submitted that the subsequent subdivision into parcels Cis-Mara/Lemek/3397–3401 and the transfer of parcels Cis-Mara/Lemek/3398 and 3399 to the Objector were carried out without a grant of representation, thereby rendering the entire process unlawful and void.

31) The Petitioners anchor their argument on section 45 of the Law of Succession Act (Cap 160, Laws of Kenya), which prohibits any person from taking possession of, disposing of, or otherwise intermeddling with the free property of a deceased person without authority. They submit that the actions of the purported vendor, a grandson of the deceased, amounted to intermeddling within the meaning of the statute. In support of this position, reliance is placed on **Truistic Union International & another v Jane Mbeyu & another [1993] eKLR**, where the Court of Appeal held that only a person holding a grant of representation has the legal capacity to deal with the estate of a deceased person, and any transaction undertaken without such a grant is null and void. Similarly, the Petitioners cite **Re Estate of Minnaritchi Mirita (Deceased) [2017] elk** for the proposition that even beneficiaries cannot dispose of property of estate before the issuance of a grant and must act through duly appointed administrators.

32) The Petitioners further submit that the Objector's claim is founded on a sale agreement dated 22nd December 2009, which expressly acknowledged that letters of administration had not been obtained at the time. They argue that this agreement was

therefore conditional and incapable of conferring any enforceable rights, as the condition precedent—obtaining a grant—was never fulfilled. They rely on section 82 of the Law of Succession Act, which vests the power of sale of estate property exclusively in personal representatives. In reinforcing the invalidity of the Objector’s claim, the Petitioners cite **Gitau & two others v Wanda & five others [1989] KLR 231**, where the court held that purchasers without authority to administer an estate acquire no valid title irrespective of their innocence. They also invoke **Muchanga Investments Ltd v Safaris Unlimited (Africa) Ltd & 2 others [2009] eKLR** to argue that the Objector’s reliance on an illegal transaction constitutes an abuse of the court process.

33) On the issue of the alleged conflict of interest, the Petitioners submit that the objection to the continued representation by M/s Lelei & Associates Advocates is without merit. They argue that the firm merely attested the impugned sale agreement and is not a material witness in the dispute. Reference is made to Rule 8 of the Advocates (Practice) Rules, which prohibits an advocate from appearing in a matter where they are likely to be a witness. The Petitioners contend that this threshold has not been met. They rely on **Delphis Bank Ltd v Channan Singh Chatthe & six others [2005] eKLR**, in which the court held that disqualification of counsel is justified only where real prejudice or mischief is demonstrated. Further reliance is placed on **King Woollen Mills Ltd & another v Kaplan & Stratton Advocates [1993] eKLR**, which they distinguish on the basis that no advocate-client relationship existed between the Objector and the impugned firm. They also cite **Uhuru Highway Development Ltd v Central Bank of Kenya & two others [2002] 2 EA 654** for the

principle that disqualification should only be ordered where the interests of justice so demand.

34) With respect to the prayer for injunctive relief, the Petitioners submit that the Objector has failed to meet the well-established threshold set out in **Giella v Cassman Brown & Co Ltd [1973] EA 358**. They argue that no prima facie case has been established, as defined in **Maro Ltd v First American Bank of Kenya Ltd & two others [2003] KLR 125**, since the Objector has not demonstrated any legally recognizable right. They further submit that no irreparable harm has been shown, relying on **Gurman Limited v Jan Bonde Nielsen & two others [2014] eKLR**, which requires that such harm be actual and incapable of compensation by damages. On the balance of convenience, the Petitioners argue that it lies in preserving the estate for lawful succession, citing **Pius Kipchirchir Kogo v Frank Kimeli Tenai [2018] eKLR**, where the court emphasized the need to maintain the status quo that best preserves property pending determination.

35) In conclusion, the Petitioners submit that the Objector's claim is wholly founded on an illegal transaction conducted in contravention of the Law of Succession Act, and that both the sale agreement and the resulting titles are void ab initio. They maintain that the application to disqualify counsel is a diversionary tactic and that the request for injunctive relief is unsupported in law. Consequently, they urge the Court to dismiss the application in its entirety with costs, affirm the validity of their legal representation, and uphold the integrity of the succession process by preserving the estate for lawful distribution among the beneficiaries.

F. ISSUES FOR DETERMINATION

36) In light of the updated record indicating that the firm **Cheruto & Company Advocates** is now on record for the Petitioners/Respondents, the issues for determination are reframed as follows:

- i. **Whether the issue of the disqualification of the firm of Lelei & Associates Advocates has been overtaken by events.**
- ii. **Whether the Objector/Applicant has met the threshold for the grant of interlocutory injunctive orders.**
- iii. **Whether the pleadings filed on behalf of the Petitioners/Respondents ought to be struck out.**
- iv. **Who should bear the costs of the application?**

G. ANALYSIS AND DETERMINATION

I. Whether events have overtaken the issue of disqualification

37) The primary relief sought by the Applicant was the disqualification of the firm of Lelei & Associates Advocates on the grounds of alleged conflict of interest. However, it is now a matter of record that the firm **Cheruto & Company Advocates** has filed a Notice of Appointment, a Replying Affidavit, and submissions on behalf of the Petitioners/Respondents.

38) The legal effect of a Notice of Appointment is to formally place a new advocate on record in substitution or in addition to previous counsel, thereby curing any alleged procedural or representational defect.

39) Courts have consistently held that where circumstances change such that the relief sought is no longer capable of being granted, the issue becomes moot. In **Muchanga Investments Ltd v Safaris Unlimited (Africa) Ltd & 2 Other elk**, the Court

emphasized that its jurisdiction is to determine live controversies and to prevent abuse of process.

40) Similarly, in **Uhuru Highway Development Ltd v Central Bank of Kenya & 2 Others [2002] 2 EA 654**, the Court underscored the need to focus on substantive justice rather than technicalities.

41) In the present case, since the impugned firm is no longer on record, the prayer for its disqualification has effectively been overtaken by events, and no practical purpose would be served by determining it.

42) The issue of disqualification is spent and overtaken by events.

II. Whether the Applicant has met the threshold for injunctive relief

43) The principles in **Giella v Cassman Brown & Co. Ltd [1973] EA 358** remain applicable. The Applicant must establish a prima facie case, irreparable harm, and that the balance of convenience tilts in his favour.

44) The Applicant's claim is based on a sale agreement entered into in 2009 in respect of estate property belonging to a deceased person who died in 2001. The transaction was undertaken without a grant of representation.

45) Section 45 of the Law of Succession Act prohibits intermeddling, while Section 82 limits dealings with estate property to duly appointed personal representatives.

46) In **Truistic Union International & Another v Jane Mbeyu & Another [1993] eKLR**, the Court of Appeal held that transactions undertaken without a grant are null and void. This position was reiterated in **Re Estate of Minnaritchi Mirita (Deceased) [2017] elk** and **Gitau & 2 Others v Wanda & 5 Others [1989] KLR 231**.

- 47) Accordingly, the Applicant has not demonstrated a legally enforceable right capable of protection. As stated in **Mrao Ltd v First American Bank of Kenya Ltd & 2 Others [2003] KLR 125**, a prima facie case must disclose an apparent right that has been infringed.
- 48) On irreparable harm, the Court adopts the reasoning in **Gurman Limited v Jan Bonde Nielsen & 2 Others [2014] eKLR**, that such harm must be actual and not speculative. The Applicant has not met this threshold.
- 49) On balance of convenience, the Court is guided by **Pius Kipchirchir Kogo v Frank Kimeli Tenai [2018] eKLR**, that preservation of estate property pending lawful administration is paramount.
- 50) The prayer for injunctive relief is **unmerited and is declined**.

III. Whether the pleadings ought to be struck out

- 51) The prayer to strike out pleadings was anchored on the alleged conflict of counsel. With the change of advocates now on record, that basis no longer exists.
- 52) Further, striking out pleadings is a draconian remedy to be exercised sparingly, as it was held in **Muchanga Investments Ltd v Safaris Unlimited (Africa) Ltd & 2 Others [2009] eKLR**.
- 53) The Court is persuaded that the issues raised by the parties require substantive determination within the succession proceedings and should not be summarily terminated.
- 54) Moreover, succession proceedings are intended to facilitate the identification of beneficiaries and the distribution of the estate. Striking out pleadings at this stage would impede the substantive determination of rights.

55) The prayer to strike out pleadings is declined.

IV. Costs

56) Costs follow the event under Section 27 of the Civil Procedure Act. The application has substantially failed, and no sufficient cause has been shown to warrant a departure from the general rule. Costs will be the main cause.

H. ORDERS

57) Accordingly, the Court makes the following orders:

- i. The prayer for the disqualification of Lelei & Associates Advocates is hereby **marked as spent**, having been overtaken by events.
- ii. The application dated 1st April 2025 is hereby **dismissed in its entirety**.
- iii. The prayer for injunctive relief is **declined**.
- iv. The prayer to strike out pleadings is **declined**.
- v. The costs **be in the main cause**..

58) **Orders accordingly.**

**DATED, SIGNED, AND DELIVERED AT NAROK, THIS 28TH DAY OF
MARCH,2026.**

CHARLES KARIUKI

JUDGE