



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ELDORET

ENVIRONMENT AND LAND CASE NO. 48 OF 2017

KABUKI WOMEN GROUP Suing through its official

CECILIA NALIANYA (Chairlady).....1ST PLAINTIFF/APPLICANT

JANET MALAMBA (Treasurer).....2ND PLAINTIFF APPLICANT

FATUMA MUNYENDO (Secretary).....3RD PLAINTIFF/APPLICANT

VERSUS

ELIZABETH WEYA MWAURA.....DEFENDANT/RESPONDENT

RULING

This is the ruling in respect of an application dated 17th April 2018 brought by way of notice of motion by the plaintiff/applicant for orders :

1. That the firm of M/S Nyairo & Company Advocates be and/or disqualify itself in this matter for and on behalf of the defendants.
2. That the court be pleased to grant such or further orders as it deems fit.
3. That the costs of the application be borne by the defendant.

Counsel argued the application and relied on the grounds on the face of the application together with the supporting affidavit. It was Counsel's submission that Nyairo & Company Advocates represented and acted for the plaintiff in respect of the suit land herein. That the correspondences and documents prepared by the said Advocates form part of the documents the plaintiff intends to rely on in this suit.

Mr. Omusundi submitted that there is conflict of interest if the said Advocates are allowed to continue to act for the defendants which may cause prejudice to the plaintiff. That there existed advocate/client confidentiality whereby the plaintiff has reasonable apprehension that there is likelihood of bias from the firm that was privy to such confidential information.

Counsel urged the court to allow the application as prayed.

Counsel for the respondent opposed the application and relied on the replying affidavit and the authorities filed in court. It was Counsel's submission that there is no conflict of interest as it acted for Kabuki Company Limited and not Kabuki Women Group. That the two entities are distinct as the current plaintiff was registered in 2016 with the Ministry of Labour Social Security and Services. He urged the court to dismiss the application as it has no merit.

Analysis and determination

I have considered the application together with the rival submissions of Counsel and find that the application lacks merit. The two entities are distinct from each other as one is a Limited Liability Company which was in existence in the 1990s and one is a Women Group registered with the Ministry of Labour, Social Security Services on 27th April 2016.

The plaintiff has further not established the alleged conflict of interest or that they would require a member of the firm of Nyairo & Co Advocates to come and give evidence in respect of any alleged transaction.

I find that there would be no prejudice that would be occasioned to the plaintiff if Nyairo & Company Advocates represented the defendant herein. I have also considered the authorities relied on and find that this application lacks merit and is therefore dismissed with costs to the

defendant.

Dated and delivered at Eldoret this 17th day of October, 2018

M.A ODENY

JUDGE

Ruling read in open court in the presence of Miss Wahome for Defendant/Respondent and in the absence of the counsel for the Plaintiff/Applicant.

Mr. Koech: Court Assistant.