

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MOMBASA

ELC CASE NO. 45 OF 2012

MAWANDO LIMITED.....PLAINTIFF

-VERSUS-

THOUSAND PALMS & 3 OTHERS.....DEFENDANTS

RULING

1. The notice of motion for determination is dated 27th May 2015 filed by the applicant. It is brought under the provisions of Advocate Practice Rules No 9 and section 1A, 1 B, 3, 3 A and 63 (e) of the Civil Procedure Act. The applicant seeks for orders ;

- **That the advocates now on record for the defendants Atkinson Cleasby & Satchu advocates be disqualified from further acting for the defendants herein.**
- **Costs of the application be provided for.**

2. The applicant avers that there is a clear conflict of interest between the director of the plaintiff and the defendants' advocates having represented the plaintiff's director. Secondly that the fiduciary relationship created between the director and the said law firm is likely to hinder the administration of justice to the detriment of the plaintiff. Thirdly that one of the purported directors of the 1st defendant whom the law firm represents is a former wife of the plaintiff's director.

3. The application is further supported by the affidavit sworn by Zahid Iqbal Dean on behalf of the plaintiff. He deposed that Atkinson Cleasby and Satchu advocates acted for him in case No 243 of 1992 which involved his former wife & Others that are directors of the 1st Defendant. The applicant deposes that the defendants in 243/92 grossly defrauded the plaintiff of various properties. It is therefore unprofessional for the said law firm to represent the defendants.

4. From the Court records, I was unable to find any document filed by the 1st defendant to oppose this application. The A. G for the second defendant did not oppose the application. On 20th May 2016, Mr Chebukaka holding brief for Satchu advocate informed Court that they required 7 days to file their submissions in response to the plaintiff's submissions. As at the time I was writing this ruling (august) which is more than 60 days, none had been filed.

5. The application as it stands is unopposed. I have no reason to refuse to grant the orders sought and therefore I grant prayer 1 of the application. Costs are not awarded.

Ruling dated and delivered at Mombasa this 6th September 2016

A.OMOLLO

JUDGE

