



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET**

**E&L CASE NO. 103 OF 2015**

**BENARD S. ROTICH.....PLAINTIFF**

**VS**

**JAMES KIMOSBEI TUWEI & 3 OTHERS.....DEFENDANT**

**RULING**

The application is dated 19/4/2010 and filed on 5/5/2010 in which the applicant seeks orders that Mr. Birech Advocate and the firm of Birech, Ruto & Company who is on record for the 1st, 2nd and 3rd defendants be disqualified from these proceedings for conflict of interest costs of this application be provided for.

The application is based on grounds that Mr. Birech and the firm of Birech, Ruto and company advocates stand to suffer from conflict of interest.

Mr. Birech and the said firm acted for the 4th defendant in numerous transactions.

The plaintiff/applicant is apprehensive that the 1st, 2nd and 3rd defendant's counsel is in custody of information that would be prejudicial to the plaintiff.

Mr. Birech has confidential information pertaining the dispute in this suit and therefore likely to be called as witness.

The application is supported by the affidavit of Bernard S. Rotich who states that:

The suit herein between the 1st, 2nd, and 3rd defendants and myself revolves around a dispute over ownership of plot No. 76 Simba Hills Farm L.R. No.8304.

That it has come to my knowledge that the Mr. Birech counsel now on record for the 1st, 2nd and 3rd defendants represented the 4th defendant company in transaction for the purchase and or acquisition of that property known as Simba Hills Farm L.R. No.8304 by the 4th defendant.

That in the said suit the Hon. Lady justice Gacheche held and indeed upheld that indeed Mr. Birech acted for the 4th defendant in transaction involving the property in dispute.

That from the foregoing, it is imperative that Mr. Birech has confidential information and his Continued representation for the 1st, 2nd and 3rd defendants would be prejudicial to the 4th defendant and me.

That am apprehensive that the information obtained by Mr. Birech, Advocate by virtue of him having

represented the 4th defendant may be used to my disadvantage.

The application dated 19/4/2010 has never been opposed. Counsel for 1st, 2nd and 3rd defendants was served but never appeared in court Mr. Korir submits that the firm of Birech and company advocates had handled a series of transactions involving the plaintiff and the defendants. Mr Birech has information obtained in confidence.

I do find that the application is merited as I believe the information in possession of Mr. Birech is likely to be prejudicial to the applicant having acted for him.

It is prudent that counsel should not delve into a matter in which he was acted for to either party in a land transaction as this would amount to conflict of interest.

Ultimately I do allow the application dated 19/4/2010 in terms of prayer 1. Costs of the suit to the plaintiff/applicant orders accordingly.

**DATED AND DELIVERED AT ELDORET THIS 20TH DAY OF MAY 2015**

**JUSTICE OMBWAYO ANTONY**

**ENVIRONMENT AND LAND COURT AT ELDORET**