



**Ngimu Farm Limited v Kariuki & 5 others (Environment & Land  
Case 28 of 2022) [2024] KEELC 5616 (KLR) (25 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5616 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MURANGA  
ENVIRONMENT & LAND CASE 28 OF 2022**

**LN GACHERU, J**

**JULY 25, 2024**

**BETWEEN**

**NGIMU FARM LIMITED ..... PLAINTIFF**

**AND**

**PATRICK NJUGUNA KARIUKI ..... 1<sup>ST</sup> DEFENDANT**

**FRANCIS MABU MURIGI ..... 2<sup>ND</sup> DEFENDANT**

**MURANG'A COUNTY TEACHERS CO-OP SOCIETY LIMITED .... 3<sup>RD</sup>  
DEFENDANT**

**MUYENGA 2040 SELF-HELP GROUP ..... 4<sup>TH</sup> DEFENDANT**

**WALLACE MAINA MICHIRE ..... 5<sup>TH</sup> DEFENDANT**

**REGISTRAR OF LANDS, MURANG'A ..... 6<sup>TH</sup> DEFENDANT**

**RULING**

1. This Notice of Motion Application before the Court dated 1<sup>st</sup> February, 2024, was brought by the Plaintiff/ Applicant, and is premised on Order 8 of the Advocates (Practice) Rules 1966, Order 51 Rules 1 and 3 of the Civil Procedure Rules, Sections 1A, 1B and 3A of the *Civil Procedure Act* and Article 159 of *the Constitution* of Kenya. The Plaintiff/Applicant sought for the following Orders:
  1. That the Law Firm of G.M. Muhoro & Co. Advocates including all practicing Advocates with them therein be disqualified and directed to withdraw and cease acting for the 1<sup>st</sup> Defendant in this matter.
  2. That the costs of this application be provided for.
2. The Application is based on the grounds stated thereon and on the Supporting Affidavit of PETER KAMANDE MUNGAI, sworn on 1<sup>st</sup> February, 2024.



3. It is the Plaintiff/ Applicant's claim that the Law Firm of G.M. Muhoro & Co. Advocates has previously acted for it between year 1995 and 2004 thereby, gaining access to information concerning the Plaintiff/ Applicant's financial standing and general position.
4. Further, it is the Applicant's contention that the said Firm of Advocates is in a position to unfairly prejudice the Plaintiff/Applicant by taking unfair advantage of the information belonging to the Plaintiff/ Applicant which is in its possession.
5. The Plaintiff/ Applicant further contended that there exists a conflict of interest as regards the law Firm of G.M. Muhoro & Co. Advocates, and itself in that the said Law Firm is purporting to act for persons who are trying to defraud the Plaintiff/Applicant of certain parcels of land, and the full facts in regard to the said parcels of land are known to the G.M. Muhoro & Co. Advocates.
6. It was further contended that an Advocate who has acted for a party can only appear as a witness in a matter involving his/her client, because he may disclose crucial information related to his client to which the Advocate is privy.
7. Further, the Plaintiff/ Applicant alleged that it offends the rules of professional ethics for an Advocate who acted for a party in any matter to turn around and purport to represent his client's adversaries. Therefore, the Applicant's further contended that the said Law Firm of G.M. Muhoro & Co. Advocates holds information regarding the acquisition of certain parcel of land by the Plaintiff/ Applicant, and the said Law Firm in question should be barred from acting for the Plaintiff/ Applicant's adversaries in the matter.
8. The Application is opposed by the 1<sup>st</sup> to 5<sup>th</sup> Defendants through Grounds of Opposition dated 23<sup>rd</sup> February, 2024. The Defendants/ Respondents contended that the person who commenced the instant suit on behalf of the Plaintiff/ Applicant lacks locus standi to represent the Plaintiff/Applicant, as he is not a member or shareholder of the Plaintiff/ Applicant, but is only a busybody. They alleged that they are genuine Directors of the Applicant with the requisite legal authority to conduct the Plaintiff/Applicant's affairs.
9. The Application is further opposed by the 3<sup>rd</sup> Defendant through the Replying Affidavit of JARVAS KAMANDE MUIRURI sworn on 23<sup>rd</sup> February, 2024.who averred that the instant suit is strange, as it has been brought by the Firm wherein the five Defendants are currently serving as the elected Directors.
10. He also contended that the originator of this suit namely PETER KAMANDE MUNGAI is a stranger to both the Plaintiff/Applicant and its Directors (the five Defendants herein), as he is not a shareholder of the Farm.
11. He challenged the said PETER KAMANDE MUNGAI to disclose his membership number in regard to the Plaintiff/ Applicant. Further, he alleged that in the AGM wherein, the said PETER KAMANDE MUNGAI was purportedly elected as a Director of the Farm was an illegal gathering as it lacked the requisite quorum needed for election of Directors, as it was attended by about 150 persons only, whereas the membership of the Applicant is constituted by 1595 persons.
12. Further, that the current Directors of the Plaintiff/ Applicant including himself have been tasked with winding up the affairs of the Plaintiff/ Applicant, including the disposal of the Plaintiff/ Applicant's assets. He also contended that it is wrongful for non-shareholders of the Applicant to interfere with the Applicant's lawful operations.



13. The Application is also opposed suit by the Law Firm of G.M. Muhoro & Co. Advocates through the Replying Affidavit of George M. Muhoro, an Advocate of the High Court of Kenya, practicing in the said Law Firm, and sworn on 15<sup>th</sup> April 2024.
14. The deponent affirmed that his Law Firm was retained by the Plaintiff/Applicant as its Advocates between year 1995 and 2003. He also confirmed that the Plaintiff/ Applicant terminated the services of his Law Firm in year 2003 following the coming to office of a new group of Directors, but was re-appointed as the Applicant's Advocates in year 2006.
15. Further, that Peter Kamande Mungai who has filed the present suit on behalf of the Plaintiff/Applicant has never been a member or Director of the Plaintiff/Applicant, and he lacks authority to commence the current suit.
16. It was his allegations that the said Peter Kamande Mungai had filed a case, being, Magistrate's Court Case no. 197 of 2020, against the genuine Directors of the Plaintiff/Applicant which suit he later abandoned.
17. The deponent refuted the claim that there exists a conflict of interest between his Law Firm and the Plaintiff/ Applicant.
18. The Court Application was canvassed by way of written submissions and the it is being determined together with 1<sup>st</sup> Defendant's Preliminary Objection dated 15<sup>th</sup> December 2022.

#### **Plaintiff/applicant's Submissions**

19. The Applicant filed written submissions dated 14<sup>th</sup> March, 2024, through the Law Firm Ombati Otieno Opondo & Awino Advocates wherein a single issue was identified for determination; namely: Whether the Application for withdrawal of the G.M Muhoro Advocates is merited?
20. The Applicant cited the definition of "conflict of interest" as set out in:
  - (a) Halsbury's Laws of England 4<sup>th</sup> Edition at Paragraph 527 on page 353;
  - (b) Black's Law Dictionary Tenth Edition; and,
  - (c) The Law Society of Kenya Code of Standards of Professional Practice and Ethical conduct, 2016 Rule 6 Paragraph 96.
21. The Applicant submitted that the Law Firm of G.M. Muhoro & Co. Advocates is privy to confidential information supplied to it by the Plaintiff/Applicant particularly financial information and information related to sale of land owned by the Farm.
22. Further, it was submitted that from the Applicant's annexure "PKM1" G.M. Muhoro Advocate of the said Law Firm confirmed receipt of monies and transferred various parcels of land on behalf of the Applicant.
23. It was the Applicant's further submission that the said Advocate will be called upon to testify on behalf of the sale agreements and monies received on behalf of the Applicant, from the Defendants in respect of sale of land which will occasion a conflict of interest because the said Advocate is acting for the Defendants herein.
24. Further, the Applicant submitted that G.M. Muhoro, Advocate is likely to pass on the said confidential information to any other counsel appointed by his Law Firm to act for the Defendants in the suit.



25. The Plaintiff/Applicant placed reliance in Section 134 of the *Evidence Act*. Further reliance was also placed in the holding of the Court in the case of King Woolen mills {formerly known as Manchester Outfitters Suiting Division Ltd} V Kaplan and Stratton Advocates [1993] eKLR; Delphis Bank Ltd V Channan Sing Chatthe & 6 others [2005] eKLR; Albert Chaurembo Mumba & 7 others V Maurice M.Munyao & 148 others [2015] eKLR and, *William Audi Odode & Another v John Yier & Another (court of Appeal Civil Application no. NAI 360 of 2004)*.
26. The Defendants/ Respondents did not file written submissions, even after being granted several opportunities to do so. Therefore, the Court will rely on their Grounds of Opposition and Replying Affidavits.
27. The court has carefully considered this instant Application, the grounds in support, in opposition to, the written submissions and the relevant provisions of Law, and finds the issues for determination are; -
  - I. Whether Peter Kamande Mungai possess the requisite authority to file the suit on behalf of the Applicant?
  - II. Whether the Plaintiff/Applicant is entitled to the orders sought?

**i. Whether PETER KAMANDE MUNGAI possess the requisite authority to file suit on behalf of the Applicant?**

28. In the case of Law Society of Kenya V Commissioner of Lands & Others, Nakuru High Court Civil Case No.464 of 2000, the Court held that:
 

“Locus Standi signifies a right to be heard, a person must have sufficiency of interest to sustain his standing to sue in Court of Law”.
29. Further, in the case of Alfred Njau and Others V City Council of Nairobi ( 1982) KAR 229, the Court held that;-
 

“ the term Locus Standi means a right to appear in Court and conversely to say that a person has no Locus Standi means that he has no right to appear or be heard in such and such proceedings”.
30. In this suit, the Defendants contended that they are currently serving as Directors of the Plaintiff/ Applicant, whereas the mover of this suit is neither a member nor Director of the Plaintiff/ Applicant, but a busybody and is interfering with the lawful operations of the Plaintiff Farm.
31. However, the mover of the current suit on behalf of the Plaintiff, PETER KAMANDE MUNGAI averred that he is a Director of the Plaintiff, and he commenced the suit in that capacity. He disputed the Defendants’ claim that he has no authority.
32. The Court has perused the pleadings, evidence and documents tendered by the parties in the suit, and has considered a copy of the list of Directors of the Plaintiff dated 6<sup>th</sup> June, 2022, annexed to the Plaintiff and marked as Document number 29. It is clear that PETER KAMANDE MUNGAI is listed therein as a Director of the Plaintiff.
33. The 1<sup>st</sup> Defendant attacked the directorship of PETER KAMANDE MUNGAI terming it as illegal because he was elected by only 150 persons whereas the Plaintiff boasts a membership of 1595 persons.
34. The Court will not interrogate the circumstances surrounding the election of PETER KAMANDE MUNGAI as a Director of the Plaintiff at this stage. The Defendants have not challenged the



authenticity of the said document naming PETER KAMANDE MUNGAI, as a Director of the Plaintiff.

35. Consequently, the Court holds and finds that PETER KAMANDE MUNGAI, has adduced sufficient evidence to prove that he is a Director of the Plaintiff, and not a busybody without any affiliation to the latter as claimed by the Defendants.

**ii. Is the Applicant entitled to the Orders sought?**

36. Rule 8 of the Advocates (Practice) Rules 1966 states as follows:

“No advocate may appear as such before any court or tribunal in any matter in which he has reason to believe that he may be required as a witness to give evidence, whether verbally or by declaration or affidavit; and if, while appearing in any matter, it becomes apparent that he will be required as a witness to give evidence whether verbally or by declaration or affidavit, he shall not continue to appear: Provided that this rule does not prevent an advocate from giving evidence whether verbally or by declaration or affidavit on formal or non-contentious matter of fact in any matter in which he acts or appears.”

37. In the case of King Woolen Mills Ltd & Another vs. Kaplan and Straton Advocates (1990-1994) EA 244, the Court of Appeal observed as follows:

“An advocate who has acted for two common clients cannot later act for either party in litigation when a dispute arises between the common clients concerning the original transaction or the subject matter for which he acted for the clients as a common advocate.”

38. Further, in the case of Delphis Bank Limited v. Channan Singh Chatthe & 6 Others ,the Court reasoned as follows:

“ 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....

39. This Court has considered the subject-matter of the suit herein which involves parcels of land which used to be the property of the Plaintiff, and which parcels of land are now registered in the names of the 1<sup>st</sup> to the 5<sup>th</sup> Defendants.

40. With that consideration, it is the finding and holding of this Court that the Law Firm of G.M. MUHORO & CO. ADVOCATES, having been retained by the Plaintiff/ Applicant from 1995 to 2003, as admitted by Mr. Muhoro Advocate ,and further retained from year 2003 in the same capacity, will place the said Law Firm in a position of conflict of interests, if allowed to represent the Defendants herein

41. Accordingly, the instant Notice of Motion Application before this Court dated 1<sup>st</sup> February, 2024, is found merited, and same is hereby allowed entirely.

42. Further, the court finds and holds that Costs to abide the cause

It is so ordered

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANGA THIS 25<sup>TH</sup> JULY 2024.**

**L. GACHERU**



**JUDGE**

25/ 07/ 2024.

Delivered online in the presence of:

Joel Njonjo - Court Assistant

Mr. Otieno for Plaintiff/ Applicant

N/A for the Defendants/ Respondents L. Gacheru

Judge

25/ 07/ 2024

