



**Kariuki & another v Nairobi City County Assembly Service Board & 6 others
(Petition E157 of 2021) [2022] KEELRC 3981 (KLR) (10 June 2022) (Ruling)**

Neutral citation: [2022] KEELRC 3981 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION E157 OF 2021**

**J RIKA, J
JUNE 10, 2022**

BETWEEN

MARK B. KARIUKI 1ST PETITIONER

SILA KOI 2ND PETITIONER

AND

NAIROBI CITY COUNTY ASSEMBLY SERVICE BOARD 1ST RESPONDENT

NAIROBI COUNTY ASSEMBLY 2ND RESPONDENT

SPEAKER, NAIROBI CITY COUNTY ASSEMBLY 3RD RESPONDENT

JUSTICE & LEGAL AFFAIRS COMMITTEE 4TH RESPONDENT

ABDI HASSAN, MCA 5TH RESPONDENT

PETER ANYULE IMWATOK 6TH RESPONDENT

ACTING CLERK, NAIROBI CITY COUNTY ASSEMBLY 7TH RESPONDENT

RULING

1. There are 2 Law Firms, contesting representation of the 6th Respondent Peter Anyule Imwatok, in this Petition.
2. The Law Firm of Ashioya Mogire & Nkatha filed a Notice of Appointment dated 12th November 2021, instructed by Imwatok.
3. The Law Firm of Ng'ang'a & Associates filed an Application dated 22nd November 2021, asking the Court to find that they represent 5th, 6th and 7th Respondents. It seeks the Court to strike out the Notice of Appointment of Advocates, filed by their counterparts for the 6th Respondent. This Application is the subject matter of today's Ruling.



4. The Application is supported by the Affidavit of the Acting Clerk of the Nairobi County Assembly, Adah Onyango, sworn on 22nd November 2021, and on Further Affidavit of Gavin R. Castro, Acting Clerk of the Nairobi County Assembly at the time of swearing the Further Affidavit, 7th February 2022.
5. Onyango explains that she, on behalf of 5th to 7th Respondent, instructed the Law Firm of Ng'ang'a & Associates to respond to the Petition. She gave instructions in writing.
6. The Law Firm of Ashioya Mogire & Nkatha however, appeared in Court on 12th November 2021, alleging to represent the 6th Respondent. It is submitted that such representation is irregular, and contrary to Civil Procedure Rules, and is meant to bring confusion into the proceedings.
7. It is explained that Imwatok is sued as a Member of the County Assembly, and a Member of the County Assembly's Justice and Legal Affairs Committee. It is therefore within the mandate of the County Assembly to retain its Legal Counsel.
8. The 6th Respondent has no personal stake in the Petition. He has been sued as the Minority Whip. The 5th to 7th Respondents have a common response to the Petition.
9. Castro adds that Onyango has since ceased to be the Acting Clerk. The dispute has nothing to do with Makongeni Ward, represented by Imwatok. The Law Firm of Ashioya furthermore is conflicted. It is one of the Law Firms, retained by the Nairobi County Assembly, to provide legal services. The list of Nairobi County Assembly Legal Service Providers, is exhibited, with the Law Firm of Ashioya listed at number 48 on the list.
10. Imwatok relies on his Replying Affidavit, sworn on 8th December 2021. He complains about the way that Onyango handled the dispute. He attacks Onyango as an irrational Acting Clerk, and unfit to hold office. He states that he appointed the Law Firm of Ashioya, to represent his interest in the Petition. He did not, as Member of County Assembly for Makongeni ward, instruct the Law Firm of Ng'ang'a. He did not give any instructions to Onyango. She could not therefore hold that 5th to 7th Respondents have a common position, while he did not give any instructions to Onyango. He cannot be denied the right to be represented by an Advocate of his choice.
11. The other Parties do not wish to take any position on representation of the 6th Respondent. The contestants agreed to have the Application considered and determined on the strength of their Affidavits and Submissions on record.

The Court Finds: -

12. The Petition is brought against the Respondents individually. They are not a collective body. 1st, 2nd, 3rd and 4th Respondents have their own Counsel. Why should the 6th Respondent be represented by the Law Firm of Nga'ng'a, if he does not wish to be so represented? Why should he be denied the right of representation by Counsel of his own choice?
13. The Court does not think that because the Respondents have been sued over a common cause of action, any or all of the Respondents, are bound to have the same Counsel representing them. The Law Firm of Ashioya has been instructed by the 6th Respondent. The 6th Respondent must be meeting his own Counsel's legal fees.
14. There is no conflict of interest, in the Law Firm of Ashioya representing the 6th Respondent. The Petition is brought by 2 Petitioners, none of which is represented by the Law Firm of Ashioya. There would be conflict, if the Law Firm of Ashioya, which is on the list of the Nairobi County Assembly



of Legal Service Providers, acted against their Client. They are not acting against the Nairobi County Assembly.

15. The Law Firm of Ng'ang'a has not established that it was instructed by the 6th Respondent to appear for the 6th Respondent. There is no legal ground to support the assertion that the 6th Respondent had no authority to engage his own Counsel. Which law deprives a litigant authority to engage own Counsel? The Court would be denying the 6th Respondent his basic right to be represented by Counsel of his own choice, by allowing the Application. There is no merit in the submission that the 6th Respondent should have filed a Notice of Change of Advocates, instead of one for Appointment of Advocates. The Law Firm of Ng'ang'a did not have instructions to act for the 6th Respondent from the inception.
16. Rule 7[1] of the Advocates [Practice Rules], invoked by the Law Firm of Ng'ang'a, states that an Advocate may act for a Client in a matter in which he knows, or has reason to believe, that another Advocate is then acting, only with the consent of that other Advocate.
17. As pointed out above, there are different Respondents in this Petition, none who is bound to be represented by Counsel appointed by the other. Secondly, the 6th Respondent gave express instructions to the Law Firm of Ashioya, not to that of Ng'ang'a. There were no instructions shown to have been supplied to Onyango, or Castro, by the 6th Respondent, so that the Law Firm of Ng'ang'a, could validly act for the 6th Respondent. There is no reason why Ashioya would be expected to know, or have reason to believe, without the instructions of the 6th Respondent, that the 6th Respondent had instructed the Law Firm of Ng'ang'a. There is no basis then, for Ashioya to seek the concurrence of Ng'ang'a in representing the 6th Respondent. No instructions issued to Ng'ang'a & Associates from the 6th Respondent, and no instructions could be withdrawn from Ng'ang'a & Associates by the 6th Respondent.
18. Lastly, if the Law Firm of Ashioya has obtained any evidential material that would prejudice the Nairobi County Assembly by virtue of its retainer, it is for the Nairobi County Assembly to make a targeted Application for expunging of such material, instead of the Advocates for the 5th and 7th Respondents, making a generalized statement that representation of the 6th Respondent by Ashioya, creates a conflict of interest. The Nairobi County Assembly has not complained about conflict of interest. The Court is persuaded that the right to Counsel of one's choice, must override concerns such as raised by the Law Firm of Ng'ang'a & Associates, in its Application.

It Is Ordered: -

- a. The Notice of Motion dated 22nd November 2021, filed by the Law Firm of Ng'ang'a & Associates, is declined.
- b. The record shall indicate that Ng'ang'a & Associates appears for the 5th and 7th Respondents, and Ashioya Mogire & Nkatha Advocates for the 6th Respondent.
- c. Costs in the Petition.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 10TH DAY OF JUNE 2022.

JAMES RIKA
JUDGE

