



REPUBLIC OF KENYA

Industrial Court of Kenya

Cause 1147 of 2012

ROBERT KUBAI LICHORO.....1ST CLAIMANT

AVIATION AND ALLIED WORKERS UNION.....2ND CLAIMANT

VERSUS

BONNE NICHOLAS BARAZA.....1ST RESPONDENT

REGISTRAR OF TRADE UNIONS.....2ND RESPONDENT

DANIEL YATICH.....INTERESTED PARTY

RULING

By a notice of motion dated 31st July 2012 filed under certificate of urgency the Applicant seeks orders that the firm of J.A. Guserwa & Co Advocates should not be given the right of audience and be disqualified from representing the 1st Respondent and the Interested party in these proceedings and that the records filed by the said firm be expunged from the record. He further prays that the order issued by Hon. Justice Stewart Madzayo (Retired) in favour of the Claimants on 5th July 2012 that was vacated by Hon. Justice Ndolo on 31st July 2012 be reinstated.

He relies on the affidavit of **ZIPPORA MAINA** sworn on 31st July 2012 and on the grounds that the said advocates represented the 2nd Claimant in Cause No. 551 and 568 of 2012 against Kenya Airways and Kenya Airports Authority respectively and that the Claimants fear she may disclose matters that came to her knowledge by such representation. The applicant filed another supporting affidavit of **RUTH N KIOKO** sworn on 27th August 2012 in which the applicants letters, receipts and correspondence to show that the said firm indeed acted for the 2nd Claimant.

The Respondent filed a replying affidavit **BONNE NICHOLAS BARAZA** opposing the application and denying that the firm of J.A Guserwa & Co. Advocates was instructed by the 2nd Claimant.

The issue for determination is whether there is a conflict of interest as to prevent the firm of J.A. Guserwa from representing the 1st Respondent and the Interested Party in these proceedings.

The law on conflict of interest of advocates is found in the advocates practice rules which provides as

follows

9. No advocate may appear as such before any court or tribunal to 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.

The Applicant has not given any specific reason why the firm of J.A. Guserwa & Co. Advocates cannot act for the 1st Respondent and Interested Party other than that the firm has acted for the 2nd Claimant before. The basis of the application is on speculation that there is fear of likelihood of disclosure of information the nature of which is unspecified. There is no legal basis for denying an advocates firm the freedom to represent any client nor curtailing the right of a litigant to be represented by an advocate of his choice unless there are very specific reasons to prevent the advocate other than what is provided for in rule 9 of the Advocates (Practice) Rules.

The relationship between an advocate and client is covered by section 134 of the Evidence Act Cap 80 which regards the relationship as confidential to the extent that the communication between the advocate and his client made to him in the course of his employment cannot be disclosed except in the circumstances contemplated in the Act.

I find the reasons given by the Applicants not to constitute sufficient reason for the firm to warrant restraining it from representing the 1st Respondent and the Interested Party in this case and dismiss the application.

On the prayer to reinstate the orders vacated by my sister Hon. Justice Ndolo on 31st July 2012, no arguments were made in support thereof. I therefore have no basis to grant the prayer and the same is similarly dismissed.

The parties are advised to avoid the many side shows in this case and to set the case down for hearing of the substantive case.

Orders accordingly

DATED AND DELIVERED AT NAIROBI THE 9TH DAY OF OCTOBER 2012.

HON. LADY JUSTICE M. ONYANGO

JUDGE

In the presence:

.....**For the Claimant**

And

.....**For the Objector**