

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)**

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 101 OF 2020

IN THE MATTER OF COMPANIES ACT

BETWEEN

JITESH JAYANTILAL LADWA

AND

**IN THE MATTER OF PETITION FOR UNFAIR PREJUDICE BY
JITESH CHANDULAL LADWA.....PETITIONER**

VERSUS

BHAVESH CHANDULAL LADWA.....1ST RESPONDENT

AATISH DHIRAJLAL LADWA.....2ND RESPONDENT

NILESH JAYANTILAL LADWA.....3RD RESPONDENT

CHANDULAL WALJI LADWA.....4TH RESPONDENT

DHIRAJLAL WALJI LADWA.....5TH RESPONDENT

MSASANI PENINSULA FLATS LIMITED.....6TH RESPONDENT

RULING

Date of Last Order: 21/10/2020

Date of Ruling: 14/12/2020

MLYAMBINA, J.

In this petition, the Court will decide on the legal objection raised by the Petitioner to the effect that:

The Respondents advocate (Michael J. T. Ngalo who drafted and filed the pleadings for the Respondents have a conflict of interest and therefore he cannot lawfully prepare, file and or appear on record for the Respondents.

When the petition came for hearing, the objector decided to withdraw the objection. The Court *suo motu*, however, re-raised the same objection and directed the parties to argue the same by way of Written submissions, hence this ruling.

Before going into further analysis, I will put into consideration the following important facts and legal position that I have discerned from the records herein. **One**, Counsel Elly Msyangi, John Chuma and Sister Bernard were previously Associates at Ngalo and Co. Advocates. **Two**, Ngalo and Co. Advocates were advocates of Ladwa Family at different point of time. **Three**, Counsel Elly Msyangi first, then John Chuma followed by Sisty Bernard left the firm of Ngalo and Co. Advocates and formed theirs in the name of Lawgical Attorneys. **Four**, Lawgical Attorneys are the one who drew and filed this petition. While Ngalo and co. advocates are the one who filed a reply and cross petition.

Without going around the bush, both Ngalo and Co. Advocates and his associates who have formed a new law firm in the name of Lawgical Attorneys lacks ethical muscles to represent the

Petitioners and the Respondents. I will expound why: ***First***, Counsel Elly Msyangi, Sisty Bernard being former Lawyers/Advocates in Ngalo and Co. Advocates a firm which represented Ladwa Family and its members cannot appear and file a petition against member of Ladwa Family or their Companies. In essence, as put by the cross-petition Advocates, they cannot ride two horses at the same time otherwise will sprit asunder.

Second, as submitted by the Respondent, in terms of regulation 51 (1) of **The Advocates (Professional Conduct and Etiquette Regulations, 2018)** conflict of interest arises where a member moves from one law firm to another firm irrespective of whether the new law firm is aware or discovers later. Regulation 51 (*supra*) requires where a moving member possess relevant information which are confidential or otherwise and if disclosed to a new law firm may prejudice the former client not to act at all or take a case for and on behalf of the client. The rule behind regulation 51 is to avoid double standards.

Third, the definition as to who is a client covered under regulation 50 of the **Advocates Professional Conduct and Etiquette Regulations** is too wide. It covers anyone whom an advocate owes a duty of confidentiality whether or not the

advocate client relationship exists. As such, both the Petitioner and the Respondent are covered to Lawgical Attorneys and Ngalo and Co Advocates.

Fourth, regulation 3 of **The Advocates (Professional Conduct and Etiquette) Regulations, 2018** defines conflict of interest to mean; *a situation that has the potential to undermine the impartiality of an advocate, because of the possibility of a clash between the advocate's self-interest and the public interests.* Both logical attorneys counsel and Mr. Ngalo Advocate having dealt with Ladwa's issues are suitable to be witnesses and not one to stand for and another appose.

The interests developed while acting for the said family bars the two law firms from drawing pleadings and representing the same client as they have confidential information. This Court in the case of **Magweiga Munanka Samo and 2 Others v. Aloyce Kisenga Kimbori and Another** Land Case No. 80 of 2017 High Court of Tanzania Dar es Salaam Registry (unreported) held;

the plaint being drawn, filed and endorsed by an advocate and firm who have confidential information against the former client, has been improperly brought before the Court. To that effect, the plaint is hereby struck out of the record.

In a similar matter of conflict of interest, the Court in the case of **General Trading Co. Ltd v. Skjevesland** (2002) EWCA Civil 1567 which was cited with approval by this Court in **Magweiga's case**, had these to observe;

the Court had the power, under its inherent powers to prevent abuse of its procedure to restrain an advocate from representing a party if it were satisfied that there was a real risk that his continued participation would lead to a situation where the order made at a trial would have to be set aside on appeal. In exceptional circumstances, that power could be exercised even if the advocate did not have confidential information.

Fifth, the representation of the Petitioner and the Respondents by both Lawgical Attorneys and Ngalo and Co. Advocates respectively goes beyond **Rule 45 of the Advocates (Professional Conduct and Etiquette) Regulations of 2018** made under **Section 69 (b) and (c) of the Advocates Act Cap 341** which provides that:

- 1. A conflict of interest is one that would be likely to affect adversely the advocate's judgment or advice on behalf of, or loyalty to a client or prospective client.*

- 2. An advocate shall not act or continue to act in a matter where there is or is likely to be at conflict unless the advocate has the informed consent of each client or prospective client for whom the advocate proposes to Act.*
- 3. A conflict of interests includes the duties and loyalties of the advocate to any other client, whether involved in the*
- 4. Particular transaction or not including the obligation to communicate information.*

In this case, the counsel for the Respondent has invited this Court to go through the letter dated 5th December, 2018 which was addressed by Advocate Ngalo to Elly Msyangi. It read:

Bear in mind that your active involvement may put you in a situation of becoming a potential witness rather than a lawyer for Jitesh.

The Respondent, therefore, shifted the conflict of interest to Elly Msyangi. On the other hand, Counsel Elly alleged that he left Ngalo's Office sometime in December, 2018 to date. Thus, at no particular time he has ever dealt and or involved with legal affairs for the Respondents.

The Petitioner further alleged that Advocates John Chuma and Sisty Bernard never worked for the Respondent or even involved in their affairs.

I have considered the arguments of both parties. The Court is of firm view that, as long as one of the advocates in Lawgical Attorneys was or happened to work with Ngalo and Co. Advocates, a law firm which worked for the Ladwa Family, they whole firm developed conflict of interests as it applies to Ngalo and Co Advocates law firm.

In the end, therefore, the Court is satisfied that the objection follows within the legal parameters of objection. Hence, both the petition and the cross petition are struck out for being drawn and filed by Lawgical Attorneys and Ngalo and Co. Advocates who have conflicts of interests. Costs be shared.



Y. J. MLYAMBINA
JUDGE

14/12/2020

Ruling delivered and dated 14th December, 2020 in the presence of Counsel Elly Msangi and Sisty Bernard for the Petitioner and Patrick Kaheshi for the Respondents.



Y. J. MLYAMBINA

JUDGE

14/12/2020

A handwritten signature in blue ink, written in a cursive style, is positioned above the printed name and title of the judge.