



**Directline Assurance Company Limited v Sikiro (Miscellaneous Application
194 of 2019) [2024] KEHC 16288 (KLR) (18 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 16288 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
MISCELLANEOUS APPLICATION 194 OF 2019
JK NG'ARNG'AR, J
DECEMBER 18, 2024**

BETWEEN

DIRECTLINE ASSURANCE COMPANY LIMITED APPLICANT

AND

JUMA ALI SIKIRO RESPONDENT

RULING

1. The Applicant filed a Notice of Motion application dated 1st October 2024 under Certificate of Urgency pursuant to Article 159 of the Constitution of Kenya, 2010, Section 1A, 1B and 3 of the Civil Procedure Act, Order 9 Rule 9 of the Civil Procedure Rules 2010 and all other enabling provisions of the law.
2. The Applicant seeks that leave be granted to the firm of Oreng, J & Associates to come on record for the Applicant in place of KRK Advocates LLP, that the sum of Kshs. 507,260 deposited in a joint interest earning account between KRK Advocates and Kanyi J. Advocates be released to the Applicant's advocates, Oreng J. & Associates, and that costs of the application be in the cause.
3. The application is premised on grounds on its face and the affidavit of Pauline Waruhiu sworn on 1st October 2024 that on 8th May 2018, the Applicant through their then advocates filed an application seeking to appeal against the ruling of the court in Mombasa CMCC 1542 of 2019. That the court allowed the application on grounds that the Applicant deposits the decretal sum of Kshs. 507,260 in a joint interest earning account in the names of both advocates then on record. That on 17th April 2020, a ruling was issued allowing the application and referring the matter back to be heard and determined by the trial court. That the Applicant now wishes to have the amount deposited in the joint interest earning account in the names of KRK Advocates LLP and Kanyi J Advocates, together with the interest thereto, returned to its advocates on record, Oreng J & Associates.



4. The Respondent in their Replying Affidavit sworn on 7th October 2024 by Kioko Maundu, an advocate acting for the Respondent, stated that the application offends Order 9 Rule 9 of the Civil Procedure Rules. That the firm of KRK Advocates LLP have neither ceased to act, given their consent as required or served with the application herein, and that it is not true that Msa MCCC No. 1542 of 2016 was dismissed as alleged. That the true position is that the suit was reheard and judgment given in favour of the Respondent on 27th November 2023. That the Appellant was notified of the judgment and decree but refused to satisfy the same. That the Applicant has not attached evidence of any funds deposited and that the said funds if any should go towards partially satisfying the decretal sum in Msa MCCC No. 1542 of 2016 which is outstanding. That the application therefore lacks merit and should be dismissed.
5. The Applicant filed a Further Affidavit sworn on 5th November 2024 by Pauline Waruhiu, the Head Claims and Legal of the Applicant, that the prayer sought for leave to come on record is in line with Order 9 Rule 9 (a). That contrary to what is pleaded in the Replying Affidavit, the firm of KRK Advocates ceased acting on 20th September 2021 and they informed the court that the Applicant had complied with the stay conditions vide its letter dated 26th November 2019. That the Applicant deposited in a joint interest earning account in the names of KRK Advocates and Kanyi J Advocates the sum of Kshs. 507,260 as was ordered. That the Respondent's assertions that the amounts held in the joint interest earning account be used to satisfy another decree is an afterthought by the Respondent.
6. The application was canvassed by way of written submissions. The Applicant filed submissions dated 4th November 2024 and argued that the procedure for coming on record after a judgment of ruling has been well set out in Order 9 Rule 9 of the *Civil Procedure Rules*. That this application does not offend the provision of seeking to come on record as it is premised on instructions given to the advocates herein after the firm of KRK Advocates LLP ceased acting for the Applicant in all its matters. The Applicant submitted that there is evidence on record that money was deposited in a joint interest earning account and that the court records of 20th September 2019 shows that the parties indeed confirmed compliance with the orders. That the amount was deposited in a joint interest account on condition that the same ought to be released back to the Applicant. The Applicant therefore prayed that the application be allowed as prayed.
7. As at the time of writing this ruling, the Respondents had not filed their submissions. This court will therefore proceed to determine the application on merit.
8. I have considered the Notice of Motion application dated 1st October 2024, the Replying Affidavit sworn on 7th October 2024, Further Affidavit sworn on 5th November 2024 and submissions by the Applicant. The issue for determination is whether the application is merited for grant of the orders sought.
9. On whether leave be granted to the firm of Orange, J & Associates to come on record for the Applicant in place of KRK Advocates LLP, this court has established that judgment was entered in favour of the Respondent on 27th November 2023. Order 9 Rule 9 of the Civil Procedure Rules is therefore applicable and provides as follows: -

When there is a change of advocate, or when a party decides to act in person having previously engaged an advocate, after judgment has been passed, such change or intention to act in person shall not be effected without an order of the court: -

 - a. upon an application with notice to all the parties; or



- b. upon a consent filed between the outgoing advocate and the proposed incoming advocate or party intending to act in person as the case may be.
10. Pursuant to the above provision, counsel coming on record for the Applicant is required to seek leave to come on record then file and serve notice of change of advocates before making an application for any other order.
11. The Court in *Kazungu Ngari Yaa v Mistry v Naran Mulji & Co.* (2014) eKLR held as follows: -
- “The provision envisages two different scenarios and the only commonalities are that, there has been a judgment and there was advocate on record previously. In first scenario under (a), the new advocate or the party in person makes a formal application to the Court with notice to all parties who participated in the suit for grant of leave to come on record or act in person. Under this first scenario, the consent of the previous advocate is not necessary, but the party must give notice to the other parties and then satisfy the Court to grant leave. In the second scenario under (b), the new advocate or party in person needs to secure the written consent of the previous advocate on record, file the consent in Court and then seek leave to come on record. My understanding of the scenario under (b) is that a formal written application is not necessary and that once the written consent has been filed, an oral or informal application would be sufficient to move the Court.”
12. This court has perused documents furnished to this court and established that the firm of KRK through a letter dated 20th September 2021 notified the Applicant of their interest to cease acting in all matters due to unpaid fees. The Applicant then instructed the firm of Orange, J & Associates which is required to fully comply with the mandatory provisions of Order 9 Rule 9 to be deemed as being properly on record and to have legal standing to move the court on behalf of the Applicant.
13. In the upshot, I allow the Applicant’s Notice of Motion application dated 1st October 2024 in terms of prayer 2. Costs be in the cause.

DATED AND DELIVERED VIA TEAMS CTS TO PARTIES WITH PRIOR NOTICE THIS 18TH DAY OF DECEMBER 2024

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J.K. NG’ARNG’AR, HSC
JUDGE

