



Brick & Mortar Holdings Limited v Commissioner of Domestic Taxes (Tax Appeal E017 of 2022) [2023] KEHC 24177 (KLR) (Commercial and Tax) (27 October 2023) (Ruling)

Neutral citation: [2023] KEHC 24177 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
TAX APPEAL E017 OF 2022
DAS MAJANJA, J
OCTOBER 27, 2023**

BETWEEN

BRICK & MORTAR HOLDINGS LIMITED APPELLANT

AND

COMMISSIONER OF DOMESTIC TAXES RESPONDENT

(Being an appeal against the judgment of the Tax Appeals Tribunal at Nairobi dated 4th February 2022 in Tax Appeal No. 327 of 2020)

RULING

1. This matter was placed before me for judgment. Upon perusing the record, it is apparent that the Appellant did not file the Record of Appeal as directed by the court (Mabeya J.) on 31.07.2023. The Judge directed that the Appellant file and serve the Record of Appeal within 21 days from the date of the orders. Thereafter the Respondent was to file the Statement of Facts following which the parties would file and exchange written submissions.
2. The record also shows that the firm of record, Chege Kariuki and Company Advocates, was granted leave to withdraw from acting for the Appellant on 20.07.2023 (Chepkwony J.). Despite being granted leave to cease acting, the advocates did not comply with the proviso to Order 9 rule 13(1) of the [Civil Procedure Rules](#) which provides as follows:

[Order 9, rule 13.]

13.

- (1) Where an advocate who has acted for a party in a cause or matter has ceased so to act and the party has not given notice of change in accordance with this Order, the advocate may on notice to be



served on the party personally or by prepaid post letter addressed to his last-known place of address, unless the court otherwise directs, apply to the court by summons in chambers for an order to the effect that the advocate has ceased to be the advocate acting for the party in the cause or matter, and the court may make an order accordingly:

Provided that, unless and until the advocate has —

- (a) served on every party to the cause or matter (not being a party in default as to entry of appearance) or served on such parties as the court may direct a copy of the said order; and
 - (b) procured the order to be entered in the appropriate court; and
 - (c) left at the said court a certificate signed by him that the order has been duly served as aforesaid, he shall (subject to this Order) be considered the advocate of the party to the final conclusion of the cause or matter including any review or appeal. [Emphasis mine]
3. Since the firm of Chege Kariuki and Company Advocates remains on record until it complies with the aforesaid order, it was properly served with process and has failed to comply with directions or attend court.
 4. The order therefore that commends itself to the court is to dismiss the appeal for want of compliance with court directions as to disposal of the appeal. There shall be no order as to costs.
 5. Orders accordingly.

SIGNED AT DUBAI

D. S. MAJANJA

JUDGE

DATED AND DELIVERED AT 27TH THIS DAY OF OCTOBER 2023.

A. MABEYA

JUDGE

