



REPUBLIC OF KENYA



Signature Tours and Travels Limited & 2 others v National Bank of Kenya & another (Civil Case 101 of 2016) [2022] KEHC 235 (KLR) (Commercial and Tax) (24 March 2022) (Ruling)

Neutral citation: [2022] KEHC 235 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE 101 OF 2016
WA OKWANY, J
MARCH 24, 2022**

BETWEEN

**SIGNATURE TOURS AND TRAVELS LIMITED 1ST APPLICANT
KOOME MUNENE 2ND APPLICANT
ALFETTA WARUIRU MUNGAL 3RD APPLICANT**

AND

**NATIONAL BANK OF KENYA 1ST RESPONDENT
GARAM INVESTMENT AUCTIONEER 2ND RESPONDENT**

RULING

1. The applicants herein filed a reference dated 4th May 2021 under Paragraph 11(2) of the [*Advocates Remuneration Order*](#) seeking the following orders: -
 1. That this Honourable court be pleased to grant an interim stay of execution of the party and party costs taxed and awarded as against the plaintiffs/applicants on 18th March 2021, pending the hearing and determination of this reference.
 2. That this honourable court be pleased to set aside the Ruling and Taxation of the Defendants Party to Party Bill of Costs dated 22nd April 2020 and delivered on the 18 March 2021.
 3. That the honourable court be pleased to direct that the Bill of Costs dated 22nd April 2020 be taxed afresh before another Taxing Officer of this honourable court.
 4. That costs of this application be provided.



2. The 1st Respondent opposed the application through a notice of preliminary objection dated 17th May 2021 wherein it states the Application is fatally defective as it contravenes the provisions of Order 9 Rule 9(a) of the Civil Procedure Rules (CPR).
3. When the matter came up for mention before the Deputy Registrar on 24th June 2021, parties were directed to file submissions in respect to both the application and the Preliminary Objection within 35 days. The case was thereafter mentioned twice on 27th September 2021 and 23rd November 2021 to confirm compliance with the order for the filing of submissions and in both instances, the 1st defendant indicated that it had filed its submissions while the plaintiffs had not complied. The court then listed the matter for ruling on 27th January 2022 on which date, the court rescheduled the ruling to 17th March 2022 upon noting that the plaintiffs' were yet to file their submissions and response to the Preliminary Objection (PO).
4. It is worth mentioning that as at the time of delivering this ruling, the plaintiffs have not filed their response to the Preliminary Objection or argued their reference application dated 4th May 2021, which should then ideally be dismissed for want of prosecution.
5. Be that as it may and the above observations notwithstanding, I am still minded to consider the merits of the Preliminary Objection whose outcome will also have the effect of determining the fate of the application.
6. The Preliminary Objection is premised on the provisions of Order 9 Rule 9 of the Civil Procedure Rules which stipulates that a change of Advocates, after judgment, should be effected either by order of Court or the consent of parties. The said provision stipulates 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”
7. In this instant case, it was not disputed that the applicants' advocate came on record after the parties had filed a consent dated 12th April 2016. The consent was adopted as an order of the court on the same date. The consent had the effect of settling the case and resulted in the taxation of party and party costs. The ruling on taxation is the subject of the instant reference/application.
8. It was also not disputed that the plaintiffs' advocate did not seek the leave of the court or the consent of the plaintiffs' former advocates on record before filing the notice of change of advocates. In sum, the plaintiffs' advocates did not comply with the provisions of Order 9 Rule 9 of the CPR before coming on record in this matter.
9. In the case of S. K. Tarwadi vs Veronica Mueblmann [2019] eKLR it was held that: -

“...In my view, the essence of the Order 9 Rule 9 of the CPR was to protect advocates from the mischievous clients who will wait until a judgment is delivered and then sack the advocate and either replace him....”



10. Similarly, in *Monica Moraa vs Kenindia Assurance Co. Ltd.* [2010] eKLR the court held as follows:

“...there is no doubt in my mind that the issue of representation is critical especially in case such as this one where the applicant’s advocates intent to come on record after delivery of judgment. There are specific provisions governing such change of advocate. In my view, the firm of M/S Kibichiy & Co. Advocate should have sought this court’s leave to come on record as acting for the applicant. The firm of M/S Kibichiy & Co. has not complied with the Rules and instead just gone ahead and filed Notice of Appointment without following the laid down procedures. The issue of representation is vital component of the civil practice and the courts cannot turn a blind eye to situations where the Rules are flagrantly breached...”

11. Guided by the applicable law and the cited decisions, I find that the plaintiffs’ advocates are not properly on record and by extension; the application filed on them on 4th May 2021 is fatally defective.

12. In the premises, I find that the preliminary objection is merited and I therefore strike out the reference dated 4th May 2021 with costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 24TH DAY OF MARCH 2022.

W. A. OKWANY

JUDGE

In the presence of: -

Mr. Evayo for Sisule for respondent,

Court Assistant – Abdi

