



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

MISC. CIVIL CASE NO. 3, 8 AND 9 OF 2019

ODHIAMBO OWITI & CO. ADVOCATE.....APPLICANT

VERSUS

DOMINION FARMS LIMITED..... RESPONDENT

AND

SUKARI INDUSTRIES LIMITED.....OBJECTOR

RULING

1. This ruling brings together three files namely HCC Civil Misc. 3, 8 and 9 of 2019.
2. The subject matter is the same in that the current proceedings in all three files relate to execution of decree for recovery of client/advocate costs and the subsequent objection proceedings filed by the Objector/applicant, Sukari Industries Ltd.
3. As this court was engaged in writing the Ruling to dispose of the objection proceedings, it was confronted with a very pertinent issue which is a preliminary issue in nature. The issue, if considered disposes of the entire application and objection proceedings without delving into the merits of the substantive application.
4. The Respondent decree holder advocate submitted quite strongly and rightly so that under Order 4 Rule 1(4) of the Civil Procedure Rules, where the Plaintiff is a corporation, the verifying affidavit shall be sworn by an officer of the company duly authorized under the seal of the company to do so. There are several in this case decisions that support that this rule and proposition,
5. I would therefore have proceeded to end those proceedings without delving into the merits thereof as the preliminary objection is a pure point of law. DW1 David Noel Okoth who is the deponent of the supporting affidavit to the application by the objector was cross examined and said that he was authorized to swear the affidavit as General Manager of the objector company Sukari Industries Ltd but he never produced any authority of the objector company under the seal of the company. Again, based on several authorities available, I would have struck out the application in limine.
6. However, I stumbled upon the decision from the Court of Appeal in **Spire Bank Ltd Vs Land Registrar and 2 Others [2019] eKLR** which none of the parties hereto cited.
7. In that appeal presided over by (Visram, Koome & Murgor JJA, the High Court – Yano J had struck out proceedings ELC Judicial Review Case No. 7/2017 at Mombasa, on the premises that the appellants’ company secretary did not file the authority of the appellant under seal of the appellant company.
8. The Court of Appeal in allowing the appeal cited several authorities among them The **Presbyterian Foundation & Another Vs East Africa Partnership Ltd and Another [2012] e KLR** where Odunga J applying the overriding objectives and principles espoused in Article 159 of the Constitution, set aside the Notice of Motion which had been struck out, and reinstated it. The superior court also ordered that the appellant do file and serve an authorization of such duly authorized officer under the seal of the company within 15 days from date of the judgement on 11/7/2019.
9. Having seriously considered the spirit and letter of the above authority which is binding on this court, I find it necessary to stay the merit determination of the objector’s application and address myself to the binding authority noting that if I was to strike out the objection proceedings on that ground of authorization under seal of the Objector company and an appeal was lodged, this decision of the Court of Appeal would surface.
10. For the above reasons, I hereby stay the merit determination of the objector’s application and grant /order that the Objector do file and

serve an authorization of such duly authorized officer under the seal of the company within 15 days from the date of this Ruling.

11. Mention on 26/10/2021 to confirm compliance and to fix a Ruling date for the application/objection by the objector on its merits.

12. Orders accordingly,

DATED, SIGNED AND DELIVERED AT SIAYA THIS 27TH DAY OF SEPTEMBER 2021

R.E. ABURILI

JUDGE