



**China Qingjian International (K) Limited v Yadong & 3 others; Kenya Urban Roads Authority & another (Garnishee) (Commercial Case E026 of 2022) [2025] KEHC 4824 (KLR) (Commercial and Tax) (8 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4824 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL CASE E026 OF 2022  
JWW MONG'ARE, J  
APRIL 8, 2025**

**BETWEEN**

**CHINA QINGJIAN INTERNATIONAL (K) LIMITED ..... PLAINTIFF**

**AND**

**XU YADONG ..... 1<sup>ST</sup> DEFENDANT**

**ENZYNE CREATIONS LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**JOHDON LIMITED ..... 3<sup>RD</sup> DEFENDANT**

**ISAAKA ADVOCATES ..... 4<sup>TH</sup> DEFENDANT**

**AND**

**KENYA URBAN ROADS AUTHORITY ..... GARNISHEE**

**KENYA COMMERCIAL BANK ..... GARNISHEE**

**RULING**

1. It is common ground that on 12<sup>th</sup> August 2022, the court (Mabeya J.,) allowed the 4<sup>th</sup> Defendant’s (“the Advocates”) application with the consequence that the Deputy Registrar’s decision postponing to act on their request for judgment against the Plaintiff was set aside. However, the court noted that the Plaintiff had since filed a reply and defence to the Advocates’ counterclaim and that there was no prayer to exclude those proceedings, therefore, the matter was to proceed as per the Civil Procedure Rules. In a ruling of the same date, the court also upheld the preliminary objections that the matter was subjudice and as such, the Plaintiff’s suit against the Defendants was struck out with costs. Attempts by the Plaintiff to stay this ruling pending an appeal was rebuffed by the court (Mabeya J.,) in a ruling dated 31<sup>st</sup> May 2023. The court also allowed the Advocates’ application that sought to strike out the



Plaintiff's defence to the counterclaim and consequently, judgment was entered for them as prayed for in their request for judgment for the sum of Kshs.59,000,000.00/= plus accrued interest.

2. The Plaintiff, in an application dated 9<sup>th</sup> June 2023 sought a stay of the aforementioned ruling pending the hearing of the said application for review which stay was temporarily granted by the court on 9<sup>th</sup> June 2023. The Advocates have now filed an application dated 1<sup>st</sup> August 2024 made under sections 1A, 1B, 3A and 7 of the *Civil procedure Act*(Chapter 21 of the Laws of Kenya) seeking that the aforementioned stay orders be discharged and/or vacated on account that the same have since been superseded by events by virtue of the court's (Mabeya J.,) ruling of 15<sup>th</sup> March 2024 under paras. 14,15,16,17, and 18 rendering the court functus officio in the review application. The Advocates' application is grounded on facts set out on its face and the supporting affidavit of Marsden Osioma, the advocate and decree holder, sworn on 1<sup>st</sup> August 2024. It is opposed by the Plaintiff through the replying affidavit of its consultant, Qu Gaolei, sworn on 18<sup>th</sup> September 2024.

### **Analysis and Determination**

3. I have gone through the Advocates' application and the Plaintiff's response. The Advocates seek to set aside the stay orders issued by the court on 9<sup>th</sup> June 2023 on the ground that the court, in its ruling of 15<sup>th</sup> March 2024 dispensed with the review application at paras. 14,15,16,17, and 18 as follows:-
  14. In the present case, the Applicant is aggrieved by the ruling of the Court delivered on 12/8/2022. The Applicant's position is that, the ruling gave contradicting decisions in that on one hand it was held that the court lacked jurisdiction and on the other hand allowed the counterclaim. This according to the Applicant demonstrated bias.
  15. I have looked at the rulings complained of. On the ruling dated 12/8/2022, there was an application filed together with a Memorandum of Appeal dated 4/4/2022 seeking the setting aside of the Deputy Registrars decision dated 4/3/2022. In the ruling, I held that the Deputy Registrar erred in dismissing the counterclaim.
  16. In the 2<sup>nd</sup> ruling dated 12/8/2022, the parties had raised two preliminary objections on the suit on the grounds that the same was sub-judice as there was already a pending arbitration on the same. In this case, due to the existence of the arbitral clause and the pending suit, the court allowed the objections and the matter was struck out.
  17. From the foregoing, it is clear that the Plaintiff's suit was struck out because the parties were already litigating the same issues in a different forum. The existence of the arbitral clause automatically ousted the jurisdiction of the Court.
  18. The second matter was counterclaim which was in respect of legal fees and was not before the arbitral tribunal. The parties had not raised any objection to it and therefore qualified as a separate suit by dint of the provisions of the Civil Procedure Rules. Under those rules, a counterclaim is a separate suit which is unaffected by the dismissal or striking out of the main suit. That is the law and it does not require any authority.
4. Whereas it is correct that Mabeya J., clarified his position and his reasons for the ruling in the aforementioned excerpt, the context for the explanation was in respect of an application for recusal and not review. In justifying his position, the learned judge was not reviewing his decision but explaining why his decision was not actuated by bias hence the reason why he felt that he ought not to recuse himself. The ruling was not reviewed and the Plaintiff's application for the review was therefore not determined as argued by the Advocates hence, their reliance on section 7 of the *Civil Procedure Act* that the matter is res judicata does not arise.



5. While I appreciate the Advocates' anxiety to execute their decree, it would be prejudicial to set aside the existing stay orders before the review application is heard and determined. The best I would do is order that the said application be heard and determined on a priority basis.

**Conclusion and Disposition**

6. In the foregoing, I find that the Advocates' application dated 1<sup>st</sup> August 2024 has no merit and the same is dismissed with costs to the Plaintiff. The application dated 9<sup>th</sup> June 2023 shall be heard on a priority basis on a date to be fixed today.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 8<sup>TH</sup> DAY OF APRIL 2025**

.....

**J.W.W. MONG'ARE**

**JUDGE**

In The Presence Of

1. Mr. Maliambo holding brief for Brenda for the Decree Holder/Applicant.
2. Ms. Ooga for the Judgment Debtor.
3. Amos - Court Assistant

