



REPUBLIC OF KENYA



KENYA LAW
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Lalji v Lalji & 3 others (Commercial Suit 330 of 2013)
[2025] KEHC 6180 (KLR) (Commercial and Tax) (15 May 2025) (Ruling)

Neutral citation: [2025] KEHC 6180 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL SUIT 330 OF 2013

NW SIFUNA, J

MAY 15, 2025

BETWEEN

SULTAN HASHAM LALJI PLAINTIFF

AND

DIAMOND HASHAM LALJI 1ST DEFENDANT

AZIM VIRJEE T/A SAMVIR REGISTRARS 2ND DEFENDANT

TRIO HOLDINGS LIMITED 3RD DEFENDANT

PROP INVEST LIMITED 4TH DEFENDANT

RULING

1. The Plaintiff filed the Motion dated 19th December 2023; seeking an order for leave to amend the Plaint further to transpose the 3rd Defendant Company to the position of a Co-Plaintiff. Which Application the 3rd Defendant opposed through its Grounds of Opposition dated 26th April 2024. The opposition was on premise that the Plaintiff's Advocates, M/S LJA Associates LLP do not have the instructions or consent to take over the 3rd Defendant's legal representation. Further that that the impugned amendment is based on the 4th Defendant's Counsel's admission from the bar which the Court of Appeal found unequivocal and not binding.
2. Upon being served with those Grounds of Opposition, the Plaintiff's Advocates then filed Notice of Change of Advocate. The same which is dated 24th May 2024, was to the effect that the 3rd Defendant had appointed them to act for it, in in place of Wakla & Company Advocates the firm then on record.
3. On 27th May 2024 when the matter came up for mention for directions of the Plaintiff's Application dated 19th December 2023, Mr. Wakla Advocate asserted that Wakla & Company Advocates had been on record for the 3rd Defendant since 9th March 2015, and challenged the said Notice (of Change of



- Advocate) primarily due to a conflict of interest on the ground that LJA Associates LLP is also acting for the Plaintiff.
4. The Court directed the parties to file skeletal written submissions on that preliminary issue. The plaintiff filed their written submissions dated 18th June 2024 and the 3rd defendant filed un-dated written submissions on 21st June 2024.
 5. Mr. Singh submitted that LJA Associates LLP is properly on record for the 3rd Defendant and that the procedure for changing advocates under Order 9 Rule 5 and 6 of the Civil Procedure Rules has been complied with. He also submitted that there is no conflict of interest because the Plaintiff has sought no adverse orders against the 3rd Defendant. He asserted that the Plaintiff filed this suit against alleged wrongs committed against the 3rd Defendant and has applied to transpose it to the position of a co-plaintiff. That contrarily, Wakla & Company Advocates have acted in bad faith against the interests of the 3rd Defendant, as depicted in its grounds of opposition.
 6. Mr. Singh also submitted that Wakla & Company Advocates earlier conceded that the Plaintiff is the sole shareholder of the 3rd Defendant. Therefore, as the sole shareholder of the 3rd Defendant, the Plaintiff held a shareholders meeting in line with the Companies Act and the Articles of Association, culminating in instructions to LJA Associates LLP to represent the 3rd Defendant in the suit.
 7. Mr. Singh relied on Section 92 of the Codes of Standards of Professional Practice and Ethical Conduct (SOPPEC) set and proclaimed by the Law Society of Kenya to the effect that where there is no conflict of interest, the Advocate is not barred from representing both sides of a dispute. He also relied on Section 56 of the Codes of Standards of Professional Practice and Ethical Conduct (SOPPEC) on the Client's right to choose an Advocate of his choice.
 8. Mr. Singh also relied on the decisions in *Uhuru Highway Development Ltd & Others v. Central Bank of Kenya Ltd & Others (2)* [2002] 2 EA 654 and *Judicial Review case of Republic v. Regulatory Committee for Non-Governmental Organizations; Visions for Life (Ex Parte Applicant)* (Judicial Review Miscellaneous Application E046 of 2022) [2024] KEHC 3268 (KLR) (Judicial Review) (3 April 2024) to assert that once a Notice of Change of Advocates is filed, the new advocates are on record for the party and that it is not the business of Court to tell a litigant which Advocate should or should not act for them. He also relied on *748 Air Services Ltd v. Theuri Munyi* [2017] eKLR, to argue that the Wakla & Company Advocates is estopped from taking a contrary position from what it earlier admitted.
 9. On their part, Wakla & Company Advocates argued that LJA Associates LLP are not properly on record, as the 3rd Defendant has not instructed it. They contested the instructions issued by the Plaintiff.
 10. Mr. Wakla urged the Court to disregard the part of Mr. Singh's submissions touching on the issues arising from Plaintiff's Application dated 19th December 2023 because they went against the Court's directives. He relied on *Civil Appeal No. 165 of 2017 Sultan Hasham Lalji v. Diamond Hasham Lalji & 2 others* to assert that the purported admission that the Plaintiff is the sole shareholder of the 3rd defendant was found to be unequivocal and non-binding.
 11. Mr. Wakla contended that LJA Associates LLP cannot represent both the Plaintiff and the 3rd Defendant in the same suit; and that there was a conflict of interest as the Plaintiff has in the Plaintiff made several allegations and claims against that 3rd Defendant in the Amended Plaintiff.
 12. As regards, the process, Mr. Wakla pointed out that LJA Associates LLP communicated their intention to file the notice of change of advocates through a letter dated 23rd May 2024. He complained that the



notice was not reasonable as it was received on 23rd May 2024 at 10.51 AM and they were expected to respond by close of business on the same day. That they however managed to obtain instructions from the 3rd Defendant and communicated their objection to the intended change vide their letter dated 24th May 2024. Shortly after, they received the notice of change of advocates filed the same day.

13. Mr. Wakla suggested that the mischief of the short notice was to make it impossible to beat the set deadline so that the Plaintiff's Advocates could file their impugned notice of change and use it to grandstand against any challenge by the 3rd Defendant's Advocates. They submitted that the practice must be frowned upon in the administration of justice.
14. He further relied on the decision in *Uhuru Highway Development Limited & Others v. Central Bank of Kenya Limited & Others (2)* [2002] 2 EA 654, for the proposition that the Court can intervene and decide on legal representation of a party if it is shown to the court that the interest of justice would not be served if a particular advocate were allowed to act in the matter.

Analysis and Determination

15. Flowing from the above, the central issue for determination is whether there is a conflict of interest if LJA Associates LLP represents both the plaintiff and the 3rd defendant.
16. I note that when this matter came up for hearing on 18th January 2016, Mr. Eshmail for the 4th Defendant raised a preliminary objection (PO) to the effect that the Plaintiff had no locus standi to institute the suit. The PO was supported Mr. Omuga for the 1st Defendant and Mr. Wakla for the 3rd Defendant.
17. Through a Ruling dated 19th April 2016, Ogola J. allowed the PO and struck out the Plaintiff's claim. The good Judge arrived at his decision, on the basis of the Defendants' counsel having accepted that the Plaintiff is the sole shareholder of the 3rd Defendant.
18. The Plaintiff appealed against the decision. The Court of Appeal noted that Pall J. had previously dealt with the issue of locus standi that the Defendants had previously raised and that the issue had been determined against the Defendants. Pall J reasoned that the Plaintiff has the locus standi to sue because he could not obtain the resolution of the company authorizing him to sue in its name.
19. The Court of Appeal found that the issue of the Plaintiff's shareholding remained an issue that was contested because the admission by the 3rd Defendant's counsel that the Plaintiff was the sole shareholder was not unequivocal. The issue of whether the Plaintiff held all the 1000 shares or only 250 shares in the 3rd Defendant, is a matter of factual evidence to be established at the hearing of the substantive suit.
20. The Court of Appeal observed as follows:

“To our mind, if the respondents were dissatisfied with the decision of Pall, J. their right of appeal availed for their assertion. Such an appeal would have been founded on the law as it was in 1996. We do not agree with learned counsel for the respondents that change in the law of civil procedure in relation to pre-trial case management procedures altered the position. Moreover, the contradictory pleadings on the pivotal shareholding in the 2nd respondent calls for interrogation to establish whether the appellant had the right to sue as he did, viewed in light of the law of procedure and company law as applicable today....”
21. In the end, the Court of Appeal allowed the Appeal. It also substituted the order of 19th April 2016 with an order dismissing the Respondents' PO.



22. From the foregoing, the concession by the 3rd Defendant's advocates that the Plaintiff is the majority shareholder of the 3rd Defendant was found to be unequivocal. It was also held that the issue of the Plaintiff's shareholding is a matter for interrogation during the trial of the substantive suit.
23. Therefore, due to the doubtfulness of the Plaintiff's standing as the sole shareholder in the 3rd Defendant Company, I find that the Notice of Change of Advocates dated 24th May 2024 filed by LJA Associates LLP was not properly on record.

DATED AND DELIVERED AT NAIROBI ON THIS 15TH DAY OF MAY 2025.

PROF (DR) NIXON SIFUNA

JUDGE

