



**Tysons Limited v JW Wambugu & IN Gitere t/a Wacira Wambugu & Company Advocates
(Miscellaneous Application E657 of 2024) [2025] KEHC 6576 (KLR) (8 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6576 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
MISCELLANEOUS APPLICATION E657 OF 2024**

F GIKONYO, J

MAY 8, 2025

**IN THE MATTER OF AN APPLICATION FOR ORDERS SEEKING TO
ENFORCE THE ADVOCATES PROFESSIONAL UNDERTAKING MADE**

BETWEEN

TYSONS LIMITED PLAINTIFF

AND

**JW WAMBUGU & IN GITERE T/A WACIRA WAMBUGU & COMPANY
ADVOCATES DEFENDANT**

RULING

1. Before the court is the defendant's chamber summons dated 2nd October 2024, made under Order I rule 10(1), (2) and 22 of the *Civil Procedure Rules*, Section 3A of the *Civil Procedure Act*, seeking that J. W. Wambugu T/A Wacira Wambugu & Co Advocates LLP be struck out from this suit.
2. The application is based on the grounds set out in the application and the annexed affidavit of John Wacira Wambugu.
3. The main ground is that the defendant is improperly joined as a party in this suit by the plaintiff, as he did not at all material times to this suit run a business or trade under the name and style of Wacira Wambugu & Co. Advocates LLP or at all with the plaintiff. The defendant also indicated that at the time of filing this suit he had ceased to be an advocate and partner at Wacira Wambugu & Co Advocates LLP.
4. The defendant relied on *Werrot and Company Ltd & Others v Andrew Douglas Gregory & others* cited in *Boniface Omondi v Mathare Youth Sports Association & Another* [2021] eKLR, on the tests for determining who is a proper party.



5. The defendant also relied on *Laly Sukhdev Singh v Onesmus Mwangi Muraguri* [2020] eKLR, *Nzioka & Co. Advocates v Harit Sheth Advocates* [2015] eKLR on the elements of a professional undertaking.

Response

6. In response, the plaintiff filed a replying affidavit sworn by its credit controller, Kirima Kirigia, on 19th November 2024 and written submissions dated 7th February 2025.
7. It was deposed that the firm that gave the professional undertaking vide letter dated 2nd July, 2012 was trading by the name of Wambugu, Motende and Company Advocates. That according to the letterhead of the said letter, J.W. Wambugu was a partner to the firm amongst 2 others (S.M. Kiruki and J.N. Ngigi). That Mr. Wambugu was the contact person, as evidenced by the plaintiff's letter demanding its valuation fees of Kshs. 850,000/- dated 27th October 2015. That Wacira Wambugu & Co. Advocates also issued a letter to its advocates Okong'o Wandago & Company Advocates, explaining why the plaintiff's valuation fees had never been paid.
8. The plaintiff therefore asserted that J.W. Wambugu & I.N. Gitere are necessary parties to the suit as they are the partners and trading as Wacira Wambugu & Co. Advocates.

Analysis and Determination

9. The issue for determination is whether the defendant is a necessary party to the suit. Under Order 1 Rule 10 (2) of the *Civil Procedure Rules*, the court may strike out an unnecessary party from a suit.
10. Justice Nambuye (Rtd) in *Joseph Njau Kingori v Robert Maina Chege & 3 others* [2002] KEHC 1192 (KLR), outlined the guiding principles for striking out a party thus:-
 - “ 1. He must be a necessary party
 2. He must be a proper party.
 3. In the case of a defendant there must be a relief flowing from that defendant to the plaintiff.
 4. The ultimate order or decree cannot be enforced without his presence in the matter.
 5. His presence is necessary to enable the Court to effectively and completely to adjudicate upon and settle all questions involved in the suit.”
11. The plaintiff instituted this suit through an originating summons dated 15th August 2024 mainly seeking an order to compel the defendant to honour its professional undertaking made through a letter dated 2nd July 2012 by paying it Kshs. 850,000/- for valuation done on Nairobi LR no 209/3574 (Nine Planet Apartments – Kabarnet Gardens).
12. The defendant seeks that the name J. W. Wambugu T/A Wacira Wambugu & Co Advocates LLP be struck out of the suit on the premise that he is improperly joined as a party to this suit by the plaintiff. He claimed that at all material times to this suit he did not run a business or trade under the name and style of Wacira Wambugu & Co. Advocates LLP or at all with the plaintiff. He deposed that the firm Wacira Wambugu & Co Advocates LLP was incorporated on 28th January 2019 and did not exist as of 2nd July 2012.



13. The plaintiff produced a letter dated 2nd July 2012 issued by Wambugu Motende & Company Advocates undertaking to pay the plaintiff's professional fees together with disbursements. It also produced a letter dated 16th December 2016 by Wacira Wambugu & Company Advocates indicating that the monies claimed are held jointly in Kenya Commercial Bank but it had not received payments as the Court of Appeal was seized of the matter.
14. The defendant did not deny that he was a partner in the law firm of Wambugu Motende & Company Advocates as of 2nd July, 2012, when the undertaking was issued.
15. The defendant also claimed that at the time of filing this suit, he had ceased to be an advocate and partner at Wacira Wambugu & Co Advocates LLP. However, an undertaking given by an advocate is personally binding on him. It only ceases to be enforceable where it is performed or discharged or where the beneficiary waives it totally. *Naphtali Paul Radier v David Njogu Gachanja T/A Njogu & Co. Advocates* – Milimani Commercial Courts Civil Case No. 582 of 2003 (OS)
16. Thus, a professional undertaking can be enforced against a person who has ceased to be an advocate or partner in the firm concerned. Hence, J. W. Wambugu T/A Wacira Wambugu & Co Advocates LLP is a necessary party for the court to determine the issues of whether there was a professional undertaking capable of being enforced and whether the defendant should honour it.
17. The conclusion is that there is no any legal justification to strike out the defendant from the suit.

Disposal

18. The upshot is that the defendant's chamber summons dated 2nd October 2024 is dismissed for want of merit with costs to the plaintiff.

DATED, SIGNED AND DELIVERED AT NAIROBI THROUGH MICROSOFT TEAMS ONLINE APPLICATION THIS 8TH DAY OF MAY, 2025

F. GIKONYO M.

JUDGE

In the presence of: -

1. Ms. May for Plaintiff
2. Ms. Adika for Applicant/Respondent
3. CA Kinyua

