



Nes Poly Pack Limited v Equity Bank (K) Limited (Miscellaneous Application E854 of 2023) [2025] KEHC 8324 (KLR) (Commercial and Tax) (13 June 2025) (Ruling)

Neutral citation: [2025] KEHC 8324 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E854 OF 2023**

FG MUGAMBI, J

JUNE 13, 2025

BETWEEN

NES POLY PACK LIMITED PLAINTIFF

AND

EQUITY BANK (K) LIMITED DEFENDANT

RULING

1. The plaintiff's application dated 7th November 2024 seeks injunctive orders to restrain the defendant (hereinafter the Bank) from disposing of the property known as Kajiado/Kaputei North/36096. In response to the application, the Bank raised a preliminary objection dated 28th November 2024, challenging the competence of the application on the basis that it was filed in violation of Order 9 Rule 9 of the *Civil Procedure Rules, 2010*.
2. The objection is anchored on the fact that the firm of Messrs. Muhatia Pala & Associates Advocates came on record for the plaintiff post-judgment, without leave of the Court or the consent of the outgoing advocates, contrary to the mandatory procedure.
3. The Bank submitted that the procedural irregularity is not cured by being "mapped" in the e-filing system, and that failure to seek leave or file consent renders all subsequent pleadings by the firm fatally defective. The plaintiff, in turn, invoked Article 159 of *Constitution* and Sections 1A, 1B and 3A of the *Civil Procedure Act*, urging the Court to prioritize substantive justice over procedural lapses.
4. The issue for determination is whether the preliminary objection is merited. Order 9 Rule 9 provides that where judgment has been entered, a change of advocate can only be effected:
 - (a) upon an application with notice to all parties, or
 - (b) upon a consent filed between the outgoing and proposed incoming advocate.



5. Order 9 Rule 10 allows such an application to be combined with other prayers, but mandates that the issue of representation be determined first.
6. In *Serab Wanjiru Kung'u V Peter Munyua Kimani*, [2021] eKLR, the Court underscored that these rules protect against unfair displacement of advocates without resolution of fees. Likewise, *Kazungu Ngari Yaa V Mistry Naran Mulji & Co.* [2014] eKLR, emphasized that the consent route or a formal application with notice must be followed before a new advocate can be deemed properly on record.
7. The Court in *Jackline Wakesho V Aroma Café*, [2014] eKLR held that noncompliance with Order 9 Rule 9 affects the Court's jurisdiction to entertain proceedings filed by an improperly on-record advocate, and that Article 159 cannot be invoked to salvage such proceedings.
8. In *Monica Moraa V Kenindia Assurance Co. Ltd.*, [2012] eKLR, Sitati, J emphasized the centrality of representation post-judgment and stated:

“ ... there is no doubt in my mind that the issue of representation is critical especially in cases such as this one where the applicant's advocates intend to come on record after delivery of judgment. ... The firm of M/s Kibichiy & Co. Advocates has not complied with the rules. ... The issue of representation is a vital component of civil practice and the courts cannot turn a blind eye to situations where the rules are flagrantly breached. ...”
9. In the present case, the Bank confirms that a mediation settlement between the parties had been adopted as a judgment of this Court on 31st January 2024. It is undisputed that at the time, the plaintiff was represented by Messrs Huldah & Coompany Advocates. Messrs. Muhatia Pala & Associates Advocates filed the application without leave of court or a filed consent. This failure to comply with Order 9 Rule 9 renders the application fatally defective. The requirement is not a mere technicality; it is a substantive procedural safeguard meant to uphold the integrity of court processes and the rights of all advocates involved.
10. Like the decisions cited above, and numerous others addressing the same issue, I find that the plaintiff's reliance on Article 159 of the *Constitution* and the overriding objective is misplaced. These provisions cannot be invoked to circumvent clear and mandatory procedural requirements. Compliance with Order 9 Rule 9 is not optional; it is a jurisdictional threshold that must be satisfied before any substantive action can be entertained post-judgment.

Disposition

11. Accordingly, the preliminary objection dated 28th November 2024 is merited. The application dated 7th November 2024 is struck out with costs to the defendant.

DATED, SIGNED AND DELIVERED IN NAIROBI THIS 13TH DAY OF JUNE 2025.

F. MUGAMBI

JUDGE

