



**Nandi v National Bank of Kenya (Miscellaneous Application
E013 of 2024) [2025] KEHC 10889 (KLR) (24 July 2025) (Directions)**

Neutral citation: [2025] KEHC 10889 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
MISCELLANEOUS APPLICATION E013 OF 2024**

JM OMIDO, J

JULY 24, 2025

BETWEEN

HABAKUK OTIENO NANDI APPLICANT

AND

NATIONAL BANK OF KENYA RESPONDENT

DIRECTIONS

1. The Appellant's Notice of Motion dated 3rd July, 2024 is expressed to be brought under Sections 1A, 1B, 3A and 63(e) of the Civil Procedure Act, Section 27 of the Limitation of Actions Act and Order 51 Rule 1 of the Civil Procedure Rules, and seeks the following orders:
 1. [Spent].
 2. That the court be pleased to grant leave to the firm of MS Kuke & Co. Advocates to come on record for the Applicant.
 3. That this Honourable Court be pleased to issue an order staying execution of the judgement/decree delivered on 16th May, 2024 in Nyando PMCC ELC No. 55 of 2022 Habakuk Otieno Nandi v National Bank of Kenya pending the hearing and determination of this application.
 4. That this Honourable Court be pleased to grant the Applicant leave to file an appeal out of time against the judgement delivered by Honourable Kiniale PM in Nyando PMCC ELC No. 55 of 2022 Habakuk Otieno Nandi v National Bank of Kenya on 16th May, 2024.
 5. That this Honourable Court be pleased to issue an order staying execution of the judgement/decree delivered on 16th May, 2024 in Nyando PMCC ELC No. 55 of 2022 Habakuk Otieno Nandi v National Bank of Kenya pending the hearing and determination of the intended appeal.
 6. That the costs of this application be provided for.



2. It is instructive from the material on record that the law firm of J.V. Obat & Co. Advocates was on record for and on behalf of the Applicant in the lower court, hence the prayer for the firm of Kuke & Co. Advocates to come on record to represent the Applicant.
3. Although the deponent to the affidavit in support of the application refers to a consent executed by the firm of Obat allowing the firm of Kuke to come on record, the same is as a matter of fact not annexed to the said affidavit.
4. What does the law say about that position? Let us read it. Order 9 Rule 9 and 10 of the Civil Procedure Rules stipulate as follows;
 - 9 (9). When there is a change of advocate, or when a party decides to act in person having previously engaged an advocate, after judgment has been passed, such change or intention to act in person shall not be effected without an order of the court—
 - (a) upon an application with notice to all the parties; or
 - (b) upon a consent filed between the outgoing advocate and the proposed incoming advocate or party intending to act in person as the case may be.
 10. An application under rule 9 may be combined with other prayers provided the question of change of advocate or party intending to act in person shall be determined first.
5. The provisions above provide two options through which a change of advocates can be effected after judgement has been entered. The first option is by obtaining the leave of the court upon an application with notice to all the parties, including the outgoing advocate, while the second option is obtaining leave upon a consent filed between the outgoing advocate and the proposed incoming advocate.
6. With regard to the first option, the Rule provides that the question of change of advocate must first be determined before the court delves into any other prayers.
7. Noting that the firm of Kuke is yet to obtain leave by either of the two options, it was obligatory for the said firm to invite the outgoing Advocates to participate in the application so that the court first determines the issue of representation, through either of the two options.
8. Accordingly, I cannot in the premises proceed to determine any of the other prayers before the issue of change of advocates is determined. That said, I direct that the matter be mentioned on 23rd October, 2025 for directions. A mention notice to be served upon the firm of Obat. If the two law firms are in agreement, I encourage that they be proactive and file a consent in line with Order 9 Rule 9 (b) of the Civil Procedure Rules.
9. As the consent is not annexed to the affidavit, and as there is nothing on record to show that the firm of Obat was served with the application and the directions that were issued in respect thereof, the application was not properly before me for hearing.

DELIVERED (VIRTUALLY), DATED & SIGNED THIS 24TH DAY OF JULY, 2025.

JOE M. OMIDO

JUDGE

For Appellant: Ms. Kuke.

For Respondent: Ms. Ogada.

Court Assistants: Mr. Ngoge & Mr. Juma.

