



**Aswa Developers and Contractors Ltd & 2 others v Synergy Industrial Credit Ltd & another (Civil Suit E808 of 2021) [2024] KEHC 92 (KLR) (Commercial and Tax) (17 January 2024) (Ruling)**

Neutral citation: [2024] KEHC 92 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL SUIT E808 OF 2021  
A MABEYA, J  
JANUARY 17, 2024**

**BETWEEN**

**ASWA DEVELOPERS AND CONTRACTORS LTD ..... 1<sup>ST</sup> PLAINTIFF  
STEPHEN WANGOMBE KINUTHIA ..... 2<sup>ND</sup> PLAINTIFF  
IRENE NJOKI WANG'OMBE ..... 3<sup>RD</sup> PLAINTIFF**

**AND**

**SYNERGY INDUSTRIAL CREDIT LTD ..... 1<sup>ST</sup> DEFENDANT  
PHILIPS INTERNATIONAL AUCTIONEERS ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. Before Court is the application dated 23/6/2023 brought under Order 22 rule 22, Order 51 of the Civil Procedure Rules 2010, sections 1A, 1B and 3A of the *Civil Procedure Act*, sections 9, 10, 31, 34 and 34A as read with section 23(2) A of the *Advocates Act*, CAP 16 Laws of Kenya and Article 50(1) (2) (b) and (c) of *the Constitution* of Kenya.
2. The application seeks the setting aside of the entire proceedings conducted by Jacob Mbae Meeme and the consequential orders made pursuant thereto be declared a nullity and that the matter do to proceed denovo.
3. The application was supported by the grounds on the face of it and the supporting affidavit of Stephen Wangombe Kinuthia sworn on 23/6/2023. It was contended that the suit was instituted on 17/9/2017, the defendants entered appearance on 21/9/2017 and one Ms. Susan Mutave was on record for the 1<sup>st</sup> respondent. That she attended to the matter on two occasions on 22/9/2021 and 5/11/2022 and Mr. Jacob Meeme took over the matter.



4. The applicant averred that Mr. Jacob Meeme was in conduct of the matter as the defendant's advocate and had appeared several times in Court. That the said person was not an advocate of the High court of Kenya and was therefore unqualified. That he created an impression that he was qualified to act as an advocate in the proceedings.
5. The application was opposed by the respondents vide a replying affidavit of JACOB MBAE MEEME sworn on 7/7/2023. He averred that the application was meant to stall the proceedings before Court and was not meritorious. That in accordance with Order 9 Rule 2 of the Civil Procedure Rules, the 1<sup>st</sup> respondent was entitled to appoint an officer to serve as a recognized agent to make appearances.
6. He admitted that while he held a bachelor of laws degree and held the position of a legal officer with the 1<sup>st</sup> respondent, he was not in employment as an advocate and neither charged fees as advocate.
7. He further averred that the 1<sup>st</sup> defendant was previously represented by Ms SUSAN NDUNGE who had filed the requisite documents before he took over the conduct of the matter on behalf of the 1<sup>st</sup> respondent. That he appeared before Justice Majanja on 16/12/2021 and introduced himself as a duly appointed recognized agent of the 1<sup>st</sup> respondent. That the provisions of section 34 of the Advocates Act did not inhibit him from signing pleadings on behalf of his appointing principal.
8. The application was canvassed by way of written submissions. The applicants submitted that section 34(1) as read with sub-section (3) makes it illegal for a person who is not an advocate to prepare legal documents. That the appearance of recognized agents is subject to courts approval and the same was not sought by the 1<sup>st</sup> respondent. Counsel submitted that the procedure provided for under Order 9 of the Civil Procedure Rules and section 34 of the Advocates Act were mandatory.
9. The respondents submitted that the 1<sup>st</sup> respondent being a juristic person was at liberty to authorize under corporate seal an officer to serve as a recognized agent. That Mr. Jacob Meeme was appointed by the 1<sup>st</sup> respondent as such to make appearances on its behalf. That the powers were granted under the Specific Power of Attorney number IPA/NO 72725/1 made on 8/6/2020. That the provisions of section 34 of the Advocate Act do not bar Mr. Jacob Meeme from appearing for the 1<sup>st</sup> respondent.
10. I have considered the parties' averments in their respective affidavits and submissions. The applicants have moved the Court to declare the proceedings conducted by Mr. Jacob Mbae Meeme a nullity and the matter be heard de novo. According to the applicants, the said person was prohibited to participate in the proceeding as it offended section 34 of the Advocates Act as he was not an advocate.
11. On their part, the respondents aver that Mr. Jacob Meeme had been appointed vide a Specific Power of Attorney number IPA/NO 72725/1 dated 8/6/2020 to act as a recognized agent for the 1<sup>st</sup> respondent. It was further submitted that Order 9 rule 2 of the Civil Procedure Rules allowed him to make appearances, applications and act on behalf of the 1<sup>st</sup> respondent.
12. The question before court is whether Mr. Jacob Meeme acting as a recognized agent could appear in Court for the 1<sup>st</sup> respondent and to what extent he could lawfully act.
13. Order 9 Rule 1 of the Rules provides as follows: -
  - “ 1. Any application to or appearance or act in any court required or authorized by the law to be made or done by a party in such court may, except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognized agent, or by an advocate duly appointed to act on his behalf:



Provided that-

a. Any such appearance shall, if the court so directs, be made by the party in person.

b. ...

2. The recognized agents of parties by whom such appearances, applications and acts may be made or done are-

“(a) Subject to approval by the court in any particular suit persons holding powers of attorney authorizing them to make such appearances and applications and do such acts on behalf of the parties.

...”

14. From the foregoing, it is clear that the parties who can appear in court and lawfully are, the parties themselves, their recognized agents and advocates. In the present case, the 1<sup>st</sup> respondent produced a Power of Attorney dated 8/6/2020 in which it authorized Mr. Jacob Meeme to appear and attend all proceedings on its behalf as well as complete, sign and deliver documents, deeds in that behalf.

15. Section 9 of the Advocate Act provides the mandatory requirements for practicing as an advocate and provides thus;

“Subject to this Act, no person shall be qualified to act as an advocate unless:

- a) he has been admitted as an advocate, and
- b) his name is on the Roll of Advocates, and
- c) he has in force a practicing certificate,

16. On the other hand, section 31 and 34 of the *Advocates Act* provides: -

“31

(1) Subject to section 83, no unqualified person shall act as an advocate, or as such cause any summons or other process to issue, or institute, carry on or defend any suit or other proceedings in the name of any other person in any court of civil or criminal jurisdiction.

(2) Any person who contravenes subsection (1) shall—

- (a) be deemed to be in contempt of the court in which he so acts or in which the suit or matter in relation to which he so acts is brought or taken, and may be punished accordingly; and (b) be incapable of maintaining any suit for any costs in respect of anything done by him in the course of so acting; and
- (c) in addition, be guilty of an offence.

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- (1) No unqualified person shall, either directly or indirectly, take instructions or draw or prepare any document or instrument—
  - (a) relating to the conveyancing of property; or
  - (b) for, or in relation to, the formation of any limited liability company, whether private or public; or
  - (c) for, or in relation to, an agreement of partnership or the dissolution thereof; or...”

17. From the forgoing, on one hand the Civil Procedure Rules 2010 recognizes a recognized agent or officer appointed under Seal by a corporation as being capable of appearing in court and represent the appointing parties. It makes it conditional on there being a power of attorney authorizing such appointment and appointment by corporate seal. Such persons in my view would not be said to be acting as advocates unless they attempt to charge legal fees, that is when they would fall foul of the [Advocates Act](#).
18. From the record, it is clear that the 1<sup>st</sup> respondent complied with the provisions of the [Civil Procedure Act](#) in so far as the appointment of Mr. Jacob Meeme is concerned.
19. As for the [Advocates Act](#), it is an offence for persons who have not met the requirements of section 9 to Act of that Act to act as advocates. Section 34 goes ahead to prohibit such persons from taking instructions or drawing any documents.
20. In *Jack J. Khanjira & Another vs Safaricom Limited (2012) eKLR*, Mwangi J observed as follows: -

“Clearly, the essential characteristic of a person acting as a recognized agent is that he or she acts, appears or makes any such applications, acts or appearances subject to the approval of the Court.

The above provision is important because by the very nature of the instrument of their appointment, it may donate to them powers which are, in law, untenable. So that, it appears to me that when exercising their functions in Court, they must periodically obtain the approval of the Court to do such acts. It is for the Court to oversee the scope and extent of the functions of a recognized agent, and to assure itself that they are not overstepping the bounds of the law. In my view, it is not the fact of being an agent that renders a donee of a power as recognized; it is the extent or scope of their agency that is recognized. That is to say, a recognised agent can perform only that which he is recognized or authorized to do in law.”
21. From the Civil Procedure Rules, a person can institute a suit either through a recognized agent, an advocate or in person. When doing so as an advocate, the [Advocates Act](#) which regulates the conduct of the Advocates kicks in. Section 9 provides the qualifications of such persons while section 31 and 34 of the Act give the prohibitions of persons who are unqualified as well as the punishment to be meted out to the unqualified.
22. In the present case, the question is whether Mr. Jacob Meeme was acting in the capacity of a recognized agent or as an advocate. I have perused the record and nothing in the proceedings shows that he presented himself as an advocate. Section 34 of the [Advocates Act](#) cannot be construed to mean that anyone not qualified under section 9 cannot file court documents. This would then block people from



acting in person or recognized agents on behalf of parties or corporations. To the extent that he did not present himself as an advocate, then this provision is not applicable to Mr. Jacob Meeme.

23. The next question is whether leave was sought before acting as a recognized agent. While the 1<sup>st</sup> respondent avers that the court was made aware of this fact, no evidence has been provided to support the same. However, failure to seek leave though improper, does not have the effect of invalidating the proceedings.

24. In *Edmund Mwangi Waweru -vs- Gabriel Wanjohi Waweru & Another* (2017) eKLR, it was held that: -

“ ... failure to seek approval of the Court to do the acts specified in that section of the law does not necessarily render the act or appearance fatally defective. I begin by pointing out that the Power of Attorney granted to the Plaintiff authorized him to sell, make legal claims, maintain and exercise all of her rights as owner of the property in all capacities ...

Despite the fact that the approval of this Court was not sought before the Plaintiff instituted this suit, there being no prejudice caused on the defendant on account of that failure, I find and hold that the failure did not affect the respondent’s capacity to sue on account of the general power of attorney given on him by his sister.”

25. In view of the foregoing, I find that the 1<sup>st</sup> respondent has proved that it had appointed Mr. Jacob Meeme as its recognized agent with the authority to institute or proceed with these proceedings and that he has been acting as such. Accordingly, the Court finds no merit in the application and the same is dismissed with costs.

It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 17<sup>TH</sup> DAY OF JANUARY, 2024.**

**A. MABEYA, FCI Arb**

**JUDGE**

