



**Okonya v Inamdar & 15 others (Civil Case E047 of 2023)
[2024] KEHC 7423 (KLR) (Civ) (20 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7423 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL CASE E047 OF 2023

JN MULWA, J

JUNE 20, 2024

BETWEEN

FRANCIS OMONDI OKONYA APPLICANT

AND

SAMIR INAMDAR 1ST RESPONDENT

JULIUS WAKO 2ND RESPONDENT

SHITUL SHAH 3RD RESPONDENT

ABDULHAGEEZ NOORAN 4TH RESPONDENT

NISHIT MARU 5TH RESPONDENT

HARPREET UBHI 6TH RESPONDENT

GEORGE MUCHIRI 7TH RESPONDENT

HAANEE KHAN 8TH RESPONDENT

LILIAN LOFTY 9TH RESPONDENT

STELLAH SITUMA 10TH RESPONDENT

GRACE KINYANJUI 11TH RESPONDENT

ALEX MUCHIRA 12TH RESPONDENT

COLLETTE AKWANA 13TH RESPONDENT

GIBRAN DARR 14TH RESPONDENT

NANCY NDEGWA 15TH RESPONDENT



RULING

1. By an Originating Summons (OS) dated 16/03/2023 the Applicant Francis Omondi Okonya sought orders against the 16 Respondents T/A Daly Inamdar Advocates LLP among them, in the main to compel them to deliver up the sum of Kshs. 568,897/= being the balance held on account of the Applicant pursuant to a decree in Nairobi HCCC No. 64 of 2015 – *Francis Omondi Okonya v The Star & 2 Others*. I have seen the decree for Kshs. 5,000,000/= dated 21/2/2020.
2. I have seen the decree, the basis of the Originating Summons.
The grounds for the Originating Summons are stated in the Applicant’s Supporting Affidavit sworn on 16/03/2023.
3. Upon service of the Originating Summons upon the Respondents, they filed a Notice of Preliminary Objection dated 4/10/2023 which is based on grounds that the Respondents were sued in their individual capacities yet they are all partners in the legal firm T/A Daly Inamdar Advocates LLP, a Limited Liability Partnership incorporated under The *Limited Liability Partnership Act*, no.2 of 2011.
4. Both parties proceeded to file their submissions on the Preliminary Objection as directed by the court, which I have considered.

Analysis and Disposition

5. As established in the celebrated case *Mukisa Biscuits & Manufacturing Company Limited v West End Distributors Limited* [1969] EA 696;
“A Preliminary Objection consists of a point of law which has been pleaded or which arises by implication out of pleadings and which if argued as a preliminary point may dispose of the Suit...”
6. The background to the filing of the Preliminary Objection is not in dispute. The Applicant had an advocate client relationship with the Respondents Daly Inamdar Advocates LLP wherein the Respondents upon receiving instructions acted for the Applicant in their corporate firm’s name in the HCC No. 42 of 2015. Upon conclusion the Applicant was awarded general damages in some of Kshs. 5, 000, 000/= plus costs and interest as stated in the decree issued on 9/04/2021.
7. The Respondents in the name and style Daly Inamdar Advocates LLP paid the decretal sum as received from their client but retained a sum Kshs. 568,897/= as lien pending payment of its legal fees by the Applicant.
8. Withholding of the said sum prompted the Applicant to file this suit by way of Originating Summons citing all 16 parties of the law firm Daly Inamdar Advocates LLP as the Respondent seeking orders stated in the Originating Summons.
9. Suing the partners in the law firm as Respondents prompted the filing of the Preliminary Objection upon the enumerated grounds. The issue therefore that falls for determination is whether partners of a limited liability partnership can be sued in their personal and individual capacities.



Under section 6(2) of the Limited Liability Partnership Act, No. 2 of 2011 the Law firm Daly Inamdar Advocates LLP is a body Corporate with perpetual succession and a legal personality distinct from that of its partners.

10. While acknowledging that the Respondent in this suit the partners t/a Daly Inamdar Advocates LLP, the Respondent submits that Order 1 rule 9 of the Civil Procedure Rules (CPR) provides that no suit shall be defeated by reason of misjoinder or non-joinder of parties and further cites Order 1 Rule 10(2) CPR (which he cites as the Civil Procedure Act in both instances) to the extent that the court may order the name of any party improperly joined whether as plaintiff or defendant to be struck out of the correct person be joined therein citing the court of Appeal case William Kiprono Towett & 1597 Others v Farmland Aviation Limited & 2 others [2016]eKLR.
11. Reliance upon Article 159 2(d) of the Constitution and the case Kenya Commercial Finance Company Limited v Richard Akwesera Civil Appeal NO. 329 of 2009 for the proposition that where there are no alternatives, there should be no striking out is misleading and irrelevant in the circumstances of the issues before the court. He has failed to show that there are no alternatives in the case before the court.
12. Failure by a party (Party's counsel) to properly follow laid down procedures and application of the law as stated in the Statute in this case the, Limited Liability Partnership Act. (LLP) cannot be cured by invoking Article 159 2 (d) of the Constitution otherwise it would be mockery of the Act under review.
13. Additionally the Applicant brought this suit, by Originating Summons (OS) against the firm's 16 partners in their individual capacities yet the agreement to offer legal services was not between the firm's partners but between the firm and its corporate name.
14. Section 7 (1)(a) Of the Act provides that a Limited Liability Partnership may sue and be sued in its name thus: -

“ A limited liability partnership is in its name, capable of suing and being sued.”

To that extent therefore no liability can attach or accrue against the Respondents for a contract to offer legal services between the Applicant and the firm.

15. Upon realization that it had sued wrong parties as Respondents upon being served with the Preliminary Objection the best the Applicant was to move the court under the legal provisions it has ably cited for amendment of its suit as far as the misjoinder or non-joinder of parties is concerned. This the applicant failed to do.
16. The above therefore leaves the court with no option but to hold that the Application dated 16/03/2023 is fatally defective and must be dismissed with costs to the Respondents.
17. Further, it is trite as stated in Mukisa Biscuit Manufacturing Company Limited (Supra) that a Preliminary Objection if argued as a preliminary point, may dispose of the suit. I also find and hold that the suit by Originating Summons as filed demonstrates no cause of action against the Respondents as sued in their personal and individual capacities.

Consequently, the Originating Summons is hereby struck out with cost to the Respondents.

Orders accordingly.

DELIVERED DATED AND SIGNED AT NAIROBI THIS 20TH DAY OF JUNE 2024.

JANET MULWA

JUDGE

