



**Directline Assurance Company Ltd v Akm Investments Ltd & 6 others (Commercial Case E256 of 2020) [2024] KEHC 12520 (KLR) (Commercial and Tax) (17 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12520 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL CASE E256 OF 2020  
PM MULWA, J  
OCTOBER 17, 2024**

**BETWEEN**

**DIRECTLINE ASSURANCE COMPANY LTD ..... PLAINTIFF**

**AND**

**AKM INVESTMENTS LTD ..... 1<sup>ST</sup> DEFENDANT**

**DR SK MACHARIA AND MRS SERAH NJERI MACHARIA  
(LEGAL REPRESENTATIVES OF THE LATE JOHN GICHIA  
MACHARIA) ..... 2<sup>ND</sup> DEFENDANT**

**LISA ANYANGO AMENYA ..... 3<sup>RD</sup> DEFENDANT**

**JANUS LTD ..... 4<sup>TH</sup> DEFENDANT**

**TERRY WIJENJE ..... 5<sup>TH</sup> DEFENDANT**

**JAMES GACHOKA T/A AMOLO AND GACHOKA ADVOCATES .... 6<sup>TH</sup>  
DEFENDANT**

**HARBOUR CAPITAL LIMITED ..... 7<sup>TH</sup> DEFENDANT**

**RULING**

1. The law firm Orange J & Associates filed a Notice of Motion application dated 2<sup>nd</sup> November 2022 seeking the following orders:
  1. That this Honourable Court be pleased to order that the notice of appointment and notice of withdrawal of this suit herein dated 19<sup>th</sup> October 2020 filed by the firm of Gakoi Maina & Co Advocates purportedly on behalf of the Plaintiff, be struck out and expunged from the record.



2. That this Honourable Court does hold and declare that the firm of Gakoi Maina & Co Advocates has not been appointed by the plaintiff to act for it in this suit.
  3. That this Honourable Court does hold and declare that the notice of appointment and notice of withdrawal of this suit herein dated 19<sup>th</sup> October 2020 filed by the firm Gakoi Maina & Co Advocates purportedly on behalf of Plaintiff, are in contravention of the law and therefore null and void.
  4. That costs of and occasioned by the said appearance, defence and notice of motion be provided for by Messrs Gakoi Maina personally.
  5. That this Honourable Court be pleased to order that the Applicant be awarded costs of this application.
2. The application is based on the grounds set out in its body and the supporting affidavit sworn by Evans Nyaga, the Principal Officer and the Chief Executive Officer of the Plaintiff company.
  3. It was averred that the notices of appointment filed by the firm Gakoi Maina & Co. Advocates and the purported notice of withdrawal of this suit dated 19<sup>th</sup> October 2022 are invalid documents as the Plaintiff did not appoint the firm of advocates.
  4. In opposition to the application, Ian Gakoi Maina of Gakoi Maina & Co. Advocates, filed a replying affidavit sworn on 17<sup>th</sup> November 2022.
  5. He averred that the firm Gakoi Maina & Co. Advocates have the authority to act for the company from the majority shareholders and current directors of the company who are the 1<sup>st</sup> – 4<sup>th</sup> Defendants herein pursuant to the Plaintiff company resolutions dated 21<sup>st</sup> July 2022 and 10<sup>th</sup> November 2022.
  6. Further that this suit was filed by minority shareholders in the name of the Plaintiff company which is illegal and ought to be struck out; that the firm of Oreng J & Associates also represent the 2<sup>nd</sup> Defendant and claim to be acting for the Plaintiff as well which presents a conflict of interest as the interests of the Plaintiff and the 2<sup>nd</sup> Defendant are antagonistic in this matter and will prejudice a fair trial.
  7. Mr. Nyaga swore a further affidavit on 21<sup>st</sup> March 2023 in response to Mr. Maina's replying affidavit. He averred that the replying affidavit is misleading in all respects and that the approved board of directors did not appoint Gakoi Maina & Co. Advocates to act for the Plaintiff.
  8. Mr. Oreng also filed and swore a further affidavit on 20<sup>th</sup> October 2023. He averred that he is a director in the plaintiff's board of directors as approved by the Insurance Regulatory Authority (IRA). He attached a resolution stating that it authorised him to file the suit and to represent the Plaintiff.
  9. It was further asserted that the resolution relied upon by Gakoi Maina & Co. Advocates is void as the persons who have signed the said resolutions are not approved directors of the Plaintiff as a requirement under Section 27A of the *Insurance Act*.

### **Analysis and determination**

10. The crux of the matter is which firm, between Oreng J & Associates and Gakoi Maina & Co. Advocates, is properly on record for the Plaintiff company. Each of the two firms claim to be representing the Plaintiff company. They both canvassed their assertions through written submissions which I have considered.



11. The firm of Oreng J & Associates argued that the firm of Gakoi Maina & Co. Advocates has not been appointed by the Plaintiff to act on its behalf in this suit and therefore the notice of appointment and notice of withdrawal of suit are purportedly null and void. Oreng J & Associates are seeking an order to have Gakoi Maina & Co. Advocates condemned to personally pay for the costs occasioned by their appearance herein together with the costs of this application.
12. According to board resolutions dated 21<sup>st</sup> July 2022 and 10<sup>th</sup> November 2022, Gakoi Maina & Co. Advocates was appointed by the Plaintiff's board of directors to act as its advocate in place of Kamau Kuria & Company Advocates, Ndegwa & Ndegwa Advocates and Oreng J & Associates. Resolutions are annexed as "IGM4" in the affidavit of Mr. Ian Gakoi.
13. The CR-12 produced as 'IGM2' as at 10<sup>th</sup> November 2022 indicated the directors of the Plaintiff company who appointed the firm of Gakoi Maina & Co. Advocates to represent the Plaintiff. The CR-12 being the only document that confirms the directors of the Plaintiff company, it follows that Gakoi Maina & Co. Advocates were properly appointed pursuant to directors' board resolutions.
14. It is therefore my finding that find that the notice of appointment and notice of withdrawal of the suit herein filed by the firm of Gakoi Maina & Co. Advocates are properly on record and before the Court.
15. Consequently, based on the foregoing, I find no merit in the application dated 2<sup>nd</sup> November 2022 and the same is dismissed. I make no orders as to costs.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 17<sup>TH</sup> DAY OF OCTOBER 2024.**

.....

**MULWA**

**JUDGE**

In the presence of:

Ms. Mideva & Ms. Achieng for plaintiff

Mr. Chege for 6<sup>th</sup> defendant

Court Assistant: Carlos

