



**RSM law LLP Advocates v S.S Malonza Advocates LLP (Civil Suit E438 of 2022)
[2025] KEHC 13455 (KLR) (Commercial & Admiralty) (25 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13455 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND ADMIRALTY
CIVIL SUIT E438 OF 2022
AA VISRAM, J
SEPTEMBER 25, 2025**

BETWEEN

RSM LAW LLP ADVOCATES APPLICANT

AND

S.S MALONZA ADVOCATES LLP RESPONDENT

RULING

Introduction

1. The Court is invited to determine the Respondent’s Preliminary Objection dated 14th November, 2022. The objection challenges the competence of the Applicant’s suit, which seeks to enforce a professional undertaking issued in relation to a cash advance of Kshs. 25,000,000/-.
2. The Respondent contends that a professional undertaking is enforceable only against the individual Advocate who gives it, not against the LLP. The Applicant maintains that the LLP, being a separate legal entity and represented through its partner, is properly sued.

Issue for Determination

3. The single issue is whether a professional undertaking given “for and on behalf of” an LLP is enforceable against the LLP, or only against the individual Advocate who signed it.
4. Kenyan jurisprudence has consistently affirmed that professional undertakings are solemn obligations, enforceable under the Court’s supervisory jurisdiction over Advocates. See Waruhiu K’Owade & Ng’ang’a Advocates v Mutune Investments Ltd [2016] eKLR.



5. Earlier decisions, such as *Conrad Masinde Nyukuri & Another v Robson Harris & Another* [2021] eKLR, emphasised that undertakings bind Advocates personally. These decisions, however, were made in the context of sole proprietorships or ordinary partnerships, which lacked separate legal personality.
6. With the enactment of the *Limited Liability Partnerships Act*, LLPs became distinct legal persons capable of suing and being sued. Section 11 of the *Act* provides that a partner is the agent of the LLP, and Section 10(5) makes the LLP liable for wrongful acts of partners done in the course of its business.
7. The UK Supreme Court in *Harcus Sinclair LLP v Your Lawyers Ltd* [2021] UKSC 32 confronted this issue. At paragraph 145, the court explained that while undertakings given on behalf of an ordinary partnership bound all the partners, the position is different for LLPs. An undertaking given by a partner “for and on behalf of” an LLP binds only the LLP as a separate legal person. The solicitor “drops out of the picture.” Critically, the court further held that LLPs are not “officers of the court.”
8. Guided by the above, and applying the rationale to the present context, undertakings given on behalf of an LLP may not attract the court’s supervisory jurisdiction in the manner sought by the Applicant, and pursuant to Order 52, rule 7 of the *Civil Procedure Rules*.
9. The undertaking in question was framed in the language of “we” and “us” and was issued on behalf of the Respondent LLP. The signatory, Mr. Malonza, did so as agent of his disclosed principal. By operation of agency and the *LLP Act*, the Respondent is contractually bound.
10. Therefore, keeping consistent with *Harcus Sinclair*, the Respondent LLP, though bound, is not subject to the court’s supervisory jurisdiction in the same way an individual Advocate would be. The conclusion is therefore that the undertaking cannot therefore be summarily enforced as an Advocates undertaking.
11. That does not however render the suit incompetent. The Applicant is entitled to pursue contractual enforcement of the undertaking against the LLP, which remains the proper Defendant. To hold otherwise would be to immunise LLPs from liability while leaving third parties without remedy leading to a result inconsistent with both law and justice.

Conclusion

12. The Court therefore finds as follows: -
 - a. A professional undertaking given “for and on behalf of” an LLP is not enforceable under the Court’s supervisory jurisdiction because an LLP is not an officer of the Court.
 - b. Such an undertaking is nonetheless contractually enforceable against the LLP, which is a separate legal entity and the proper Defendant in these proceedings.
 - c. The Respondent’s Preliminary Objection, predicated on the claim that only the individual Advocate could be sued, lacks merit.
13. The Preliminary Objection is accordingly dismissed. Costs shall follow the event.

DATED AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS THIS 25TH DAY OF SEPTEMBER, 2025

ALEEM VISRAM, FCIArb

JUDGE

In the presence of;



Court Assistant: Lisper

.....for Applicant

.....for Respondent

