



**Ahmednasir, Abdikadir & Company Advocates v Mbugua (Commercial Case 053 of 2023)
[2025] KEHC 14988 (KLR) (Commercial and Tax) (23 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14988 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE 053 OF 2023
AA VISRAM, J
OCTOBER 23, 2025**

BETWEEN

AHMEDNASIR, ABDIKADIR & COMPANY ADVOCATES PLAINTIFF

AND

DANIEL MWANGI MBUGUA DEFENDANT

RULING

1. I have considered the Chamber Summons Application dated 29th July, 2024, together with affidavit in support sworn on even date, the reply sworn on 21st March, 2025, in opposition to the same, the rival submissions, and the applicable law.
2. The Application seeks, in summary, leave to substitute the Defendant to be sued on behalf of and as a decree of power of attorney dated 20th September, 2018, from the Defendant in these proceedings, and further, seeking to amend and attached documentation necessary following the substitution with the donee.
3. In support of the Application, the Defendant submitted that his health was ailing, and that he had limited resources to keep up with his financial requirements. He explained that he granted Ms. Mwangi the full power of attorney in 2018, and the same was served on the Plaintiff.
4. He further submitted that he has an eyesight problem and was unable to file documents himself. This is the reason why it was imperative to allow Ms. Mwangi, his daughter, to be sued on behalf of and as decree of power of attorney, so that justice could be done.
5. In opposition to the Application, the Plaintiff submitted that the General Power of Attorney dated 20th September, 2018, clearly states that the Defendant/Applicant had appointed Wanjiru Mwangi to



represent her in any litigation proceedings which is similar to an Advocate being instructed to represent the Defendant/Applicant.

6. In this regard, Counsel submitted that the Defendant/Applicant is the principal who, through the Power of Attorney, has instructed Wanjiru Mwangi to appear on his behalf as she has always done, without any impediment. This includes filing of pleadings and any amendments related to filed pleadings.
7. The Defendant submitted that an alleged eye illness is not sufficient enough to incapacitate the Defendant/Applicant and prevent him from filing any pleadings. In any case, the alleged eye illness has not been established and proved at any instance.
8. Additionally, that the prayer for substitution was, in his view wholly untenable, for the reason that the Plaintiff/Respondent's cause of action is squarely against the Defendant/Applicant and not Wanjiru Mwangi on account of privity of contract.
9. Counsel pointed out that the Fee Agreement dated 28th January, 2020, and referenced to in Paragraphs 12 and 13 of the Plaintiff/Respondent's Replying Affidavit is premised on privity of contract. In Counsel's view, Ms. Mwangi was barred from defending the validity and contents of the Fee Agreement as she did not endorse the same in her personal capacity to be bound by it.
10. The Defendant relied on the decision of the Court of Appeal in *Savings & Loan (K) Limited v Kanyenje Karangaita Gakombe & another* [2015] KECA784 (KLR) whereby Hon. Justices Daniel Musinga, Gatembu Kairu and Kathurima M'Inoti held as follows:-

“In its classical rendering, the doctrine of privity of contract postulates that a contract cannot confer rights or impose obligations on any person other than the parties to the contract. Accordingly a contract cannot be enforced either by or against a third party. In *Dunlop Pneumatic Tyre Co Ltd V Selfridge & Co Ltd*[1915] AC 847, Lord Haldane, LC rendered the principle thus:

“My Lords, in the law of England certain principles are fundamental. One is that only a person who is a party to a contract can sue on it.”

“In this jurisdiction that proposition has been affirmed in a line of decisions of this Court, among them *Agricultural Finance Corporation V Lengetia Ltd*(supra), *Kenya National Capital Corporation Ltd V Albert Mario Cordeiro & Another*(supra) and *William Muthee Muthami V Bank Of Baroda*, (supra).

Thus in *Agricultural Finance Corporation V Lengetia Ltd*(supra), quoting with approval from *Halsbury's Laws of England*, 3rd Edition, Volume 8, paragraph 110, Hancox, JA, as he then was, reiterated:-

“As a general rule a contract affects only the parties to it, it cannot be enforced by or against a person who is not a party, even if the contract is made for his benefit and purports to give him the right to sue or to make him liable upon it. The fact that a person who is a stranger to the consideration of a contract stands in such near relationship to the party from whom the consideration proceeds that he may be considered a party to the consideration does not entitle him to sue upon the contract.”

11. Having considered the above, I am persuaded that the substitution would prejudice the Plaintiff for the various reasons stated by Counsel. Moreover, I am of the view that in the event the Defendant is



truly unable to act owing to incapacity, the proper procedure would be to substitute the Defendant with an appropriate legal agent, not an agent acting under a power of attorney.

12. The rules of the court provide for sufficient and appropriate mechanisms for representation in such an instance, if this is the case. Further, incapacity may not be self-declared for purpose sought herein, the same must be proved by way of evidence and in accordance with the threshold prescribed under the *Mental Health Act*, or on the relevant laws.
13. Once and if proved, the appropriate procedure would be for the Defendant to apply for guardianship for the purpose of litigation, or appointment a legal representative as may be appropriate. To my mind, the present Application falls short available procedures and mechanisms provided under our legal framework.
14. Finally, I do not think the reasons provided by the Defendant were either appropriate or sufficient for the intended substitution. The Defendant has submitted that he is unwell, and ailing. He is still unless proven otherwise, mentally competent. The Defendant is therefore the proper party to the case. In any event, I note that Ms. Mwangi is already his agent and managing his legal affairs, including the present litigation. I see no good reason to substitute her for the Defendant.
15. Based on the reasons set out above, I find and hold that the Application is without merit the same is dismissed with costs.

DATED AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS THIS 23RD DAY OF OCTOBER, 2025

ALEEM VISRAM, FCI Arb

JUDGE

In the presence of;

Court Assistant: Lispa

.....for Plaintiff/Respondent

.....for Defendant/Applicant

