



**Temple Point Resort Limited v Salama Beach Hotel Limited (Civil Suit E034 of 2018)  
[2025] KEHC 15422 (KLR) (Commercial and Tax) (27 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15422 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL SUIT E034 OF 2018  
FG MUGAMBI, J  
OCTOBER 27, 2025**

**BETWEEN**

**TEMPLE POINT RESORT LIMITED ..... PLAINTIFF**

**AND**

**SALAMA BEACH HOTEL LIMITED ..... DEFENDANT**

**RULING**

1. This Ruling determines two applications. The first, which by its nature requires priority in determination, is the one dated 21<sup>st</sup> July 2023, filed by the defendant. The application seeks to have the Firm of F. Karanja & Company Advocates come on record in place of Messrs. Gichuki Karuga & Co Advocates representing the defendant and for them to be allowed to file a response to the review application filed by the plaintiff, dated 25<sup>th</sup> November 2022. It is further sought to stay all further proceedings before this Court pending the hearing and determination of the appeal filed in Civil Appeal No. E427 of 2023.
2. The application is supported by an affidavit sworn by Stefano UCCELLI, described as a director of the defendant company, on even date. It is the defendant's case that as far as the prayer for its new counsel to come on record, there is no objection from the previous counsel, Ms. Gichuki Karuga & Co Advocates.
3. On the substantive issue, the defendant maintains that following a decision by this Court (Mshila J.) on 11<sup>th</sup> November 2022, it duly filed an appeal, namely Civil Appeal No. E427 of 2023. Alongside this, the plaintiff also filed an application dated 25<sup>th</sup> November 2022, seeking a review of the same ruling, and that application remains pending before this Court. The defendant argues that both the appeal and the review application revolve around the same facts and issues, specifically focusing on which law firm possesses the valid authority to represent the defendant, authority that is grounded in instructions from its bona fide and lawful directors.



4. In essence, the core dispute in both proceedings is identical, and proceeding with the current application at this stage would be a duplication of effort and potentially counterproductive, given that the court of appeal is already seized of the matter.
5. The application is opposed through a replying affidavit sworn by HANS JUERGEN LANGER on 15<sup>th</sup> April 2024. In paragraph 2(d) of this affidavit, he concedes that the ruling of 11<sup>th</sup> November 2022 is indeed the subject of both an application for review and an appeal. Despite this acknowledgment, the plaintiff contends that the current application for stay of proceedings does not meet the legal threshold mandated under Order 46 Rule 6 of the Civil Procedure Rules and therefore, the application for stay should be dismissed, asserting that maintaining the proceedings would not cause any prejudice or injustice that warrants such drastic relief.
6. The plaintiff further contends that, having filed an application for the review of the impugned orders, it would be contrary to the principles of natural justice to exclude a party that has sought the court's intervention. They argue that denying the review would unfairly restrict the party's right to seek correction of the court's order through the appropriate legal remedy.
7. The plaintiff emphasizes that if the court dismisses the review application, the appeal process would continue independently and reach its conclusion. Conversely, if the review is granted, there remains nothing to prevent the defendant from filing another appeal should they be dissatisfied with the outcome of the review. This approach ensures that each remedy is preserved and that the principles of fairness and justice are upheld throughout the process.
8. Additionally, the plaintiff contends that the intended appeal, at first glance, does not appear to raise any arguable points. This is because the decision that the defendants seek to challenge is discretionary, and they have not provided any prima facie facts indicating a likelihood of success on appeal. Furthermore, contrary to Rule 82 of the Court of Appeal Rules, which requires the appeal to be filed within 60 days, no such appeal has been served on the plaintiff to date.

### **Analysis and Determination**

9. The parties filed their respective submissions which I have equally considered. The first issue for determination is whether the Firm of F. Karanja & Company Advocates should be granted leave to come on record in place of Ms. Gichuki Karuga & Co Advocates for the defendant. No objection has been raised by the plaintiff or Ms. Gichuki Karuga & Co Advocates. I have equally had sight of the consent dated 21<sup>st</sup> July 2023, executed between the two Firms of Advocates. I find no difficulty allowing the prayer. Accordingly, leave be and is hereby granted to the Firm of F. Karanja & Company Advocates to come on record in place of Ms Gichuki Karuga & Co Advocates.
10. Aside from that, the core question for determination is whether these proceedings should be stayed pending the outcome of Civil Appeal No. E427 of 2023. The fundamental issue here is whether it is permissible for an appeal and a review to proceed simultaneously. It is well established that review and appeal serve distinct purposes and can, in certain circumstances, be pursued concurrently, provided they are based on different grounds and do not occasion any prejudice to the parties. Therefore, the question is whether the circumstances of this case justify a stay of proceedings to allow the appeal to be determined, without compromising the principles of fair hearing and justice.
11. Order 45 Rule 1 of the Civil Procedure Rules is instructive in this regard that:

“(1) Any person considering himself aggrieved—



- (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
- b. by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review.”

12. I have reviewed the application dated 25<sup>th</sup> November 2022 against the Memorandum of Appeal dated 8<sup>th</sup> June 2023. Both address the same central issue which is that in the impugned decision of 11<sup>th</sup> November 2022, the Learned Judge erroneously invoked Order 9 Rule 9 of the Civil Procedure Rules, which governs change of advocates post-judgment and was inapplicable to the matter at hand. The principal issue before the Court concerned the defendant’s status as a director and their authority to instruct legal counsel on the company’s behalf.
13. Both the appeal and the review contend that the court’s ruling was founded on a misinterpretation or misapplication of the factual circumstances. The parties maintain that, as a consequence, the decision failed to properly address the central issue. It is therefore undisputed that both proceedings are grounded on essentially the same facts and issues. Clearly, the Rules do not envisage the concurrent pursuit of such parallel proceedings, as this could result in unnecessary duplication, inconsistent outcomes, and a potential misuse of the judicial process.
14. Contrary to the assertion by the plaintiffs that no appeal has been filed, I note that the defendants have presented before this Court, a Memorandum of Appeal along with evidence confirming the status of that appeal. Specifically, there is an email dated 20<sup>th</sup> February 2020, which confirms the directions issued by the Court of Appeal regarding submissions. This evidence effectively undermines the plaintiff’s case, as it demonstrates that the Court of Appeal is already seized of the matter. Proceeding with the matter at this stage would not only risk causing embarrassment to the courts by potentially conflicting decisions but would also be contrary to the principles of the comity of courts and the doctrine of sub judice.

### **Disposition**

15. Accordingly, I allow the application dated 21<sup>st</sup> July 2023. The applicant shall have the costs of the application. The proceedings in this matter are hereby stayed pending the hearing and determination of Civil Appeal No. E427 of 2023 at the Court of Appeal. In view of this, for the avoidance of doubt, the application dated 25<sup>th</sup> November 2022 is struck out with costs for want of jurisdiction.

**DATED, SIGNED AND DELIVERED AT NAIROBI**

**THIS 27<sup>TH</sup> DAY OF OCTOBER 2025.**



**F. MUGAMBI**  
**JUDGE**

