



**Njuguna v Tetra Pak Limited (Civil Application 240 of 2024)
[2025] KECA 1816 (KLR) (7 November 2025) (Ruling)**

Neutral citation: [2025] KECA 1816 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION 240 OF 2024
W KARANJA, K M'INOTI & LA ACHODE, JJA
NOVEMBER 7, 2025**

BETWEEN

JOSEPH NJOGU NJUGUNA APPLICANT

AND

TETRA PAK LIMITED RESPONDENT

(Being an application to strike out a Notice of Appeal filed on 6th May 2024 against the decision of Mabeya J delivered in Nairobi on 30th April 2024 in HCCC No. 389 of 2011 consolidated with HCCC No. 422 of 2007)

RULING

1. This is an application by Joseph Njogu Njuguna, the applicant, seeking to strike out a Notice of Appeal dated and filed on 6th May 2024, by Tetra Pak Limited, the respondent. The appeal arises from the decision of Hon. Mabeya J, delivered on 30th April 2024 in HCCC No. 389 of 2011 consolidated with HCCC No. 422 of 2007.
2. The application is grounded on the Notice of Motion dated 20th May 2024, in which the applicant contends that the firm of Musyoka Wambua & Katiku Advocates ceased operations around 2013 and no longer exists as a practising entity. Accordingly, the applicant asserts that there is no duly recognized advocate within that firm, competent to represent the respondent. It is further claimed that the advocate purporting to act under the defunct firm's name is currently affiliated with Katiku & Muturi Advocates LLP, which has been used consistently in the filing of documents in the current and related proceedings.
3. In support of the application, the applicant annexed various documents, including court directions, affidavits of service, electronic law firm search results, and correspondence from the Law Society of Kenya dated 15th May 2024, which allegedly confirm that Musyoka Wambua & Katiku Advocates is no longer a valid legal practice.



4. In response, the respondent filed a replying affidavit sworn by Mr. John Katiku, contending that the issue of legal representation is raised in bad faith. That the applicant acquiesced to representation by Musyoka Wambua & Katiku Advocates throughout the High court proceedings, including the judgment that was rendered in his favour.
5. The respondent disputes the allegation that the firm ceased operations in 2013 and asserts that the firm remained operational until 28th May 2024, when a formal notice of cessation of practice was submitted to the Law Society of Kenya. It is contended that the applicant has failed to rebut this fact and that Mr. Katiku is a duly qualified advocate, holding a valid practicing certificate and he personally signed the Notice of Appeal, rendering the appeal process lawful regardless of the firm name used. It is further argued that any procedural irregularities alleged do not occasion prejudice to the applicant and cannot vitiate the appeal, particularly in the absence of compromise to substantive justice.
6. Emphasis is placed on the fact that the applicant benefited from representation by the same firm during earlier proceedings and has not demonstrated any prejudice arising from the current representation. The respondent thus prays for the application to be dismissed with costs.
7. The applicant filed a Supplementary Affidavit highlighting critical issues concerning the purported representation of the respondent by the law firm of Musyoka Wambua & Katiku Advocates. The applicant subsequently received a letter dated 17th May 2024 from the Law Society of Kenya (LSK), confirming that the purported law firm of Musyoka Wambua & Katiku Advocates is non-existent. The LSK expressly warned that any advocate purporting to practice under that name would face disciplinary proceedings.
8. The applicant avers that in an apparent attempt to avert the threatened disciplinary action, Mr. John Katiku wrote to the LSK on 28th May 2024, claiming that the firm had ceased operations on that same day. Notably, the firm's letterhead identifies Mr. Katiku as the sole partner, which raises questions about the existence and legality of the firm from the outset.
9. The applicant avers that there was improper transition between law firms. He states that on 29th May 2024 a non-existent firm purportedly entered into a consent with Katiku & Muturi Advocates, LLP, purporting to transfer conduct of the matter in the trial court. However, the Notice of Appointment of Advocates was filed by Katiku & Co. Advocates, while the Notice of Appeal was filed under the name of Musyoka Wambua & Katiku Advocates. This inconsistency contravenes Rule 23 which governs representation and proper substitution of counsel in matters transitioning from the trial court to the appellate Court.
10. The applicant submits further that the respondent has failed to produce any evidence to prove the existence of Musyoka Wambua & Katiku Advocates prior to 28th May 2024, despite alleging that it was registered with the Business Registration Service. Mere mention of registration without formal proof cannot validate representation before the court.
11. The applicant further states that the principle of laches and ethical responsibility is inapplicable in this case. That Mr. Katiku, being an officer of the court, bore an overriding duty to disclose material facts and could not lawfully continue to participate in proceedings under the name of a non-existent law firm. According to the applicant, the continued misrepresentation constitutes an abuse of court process and undermines the integrity of judicial proceedings.
12. The applicant filed written submissions through the firm of Messrs J. M. Makau & Company Advocates on 18th July 2024, while the respondent's submissions were filed by Katiku & Muturi Advocates, LLP on 2nd May 2025.



13. The applicant submits that the former partners of Musyoka Wambua & Katiku Advocates dissolved the partnership as evinced by annexures and affidavits. Relying on Section 35(1)(a) of the Partnership Act, it is argued that a partnership automatically dissolved when the number of partners fell below two. Accordingly, the firm could not legally subsist with only one member, Mr. Simiyu, one of the original partners, having long ceased association with the firm and established another practice. Therefore, no single partner could lawfully continue the firm or be a partner in two distinct firms.
14. The applicant further argues that under Sections 35, 36, and 40 of the Partnership Act, dissolution of a firm in the circumstances presented cannot justify continued use of the firm name. Therefore, the use of the name for filing the Notice of Appeal contravenes these provisions. The applicant contends that the respondent is improperly relying on Section 42 of the Partnership Act which provides for the full dissolution of partnerships, yet no evidence has been presented to show that other former partners consented or signed the affidavit. This, the applicant argues, renders the reliance on Section 42 misleading and unfounded.
15. It is also submitted that the respondent lacks a proper agent as required by Order 9 Rule 1 of the Civil Procedure Rules, 2010, as a non-existent law firm cannot validly act as a recognized agent in legal proceedings. That the respondent attempted to rectify the defect by filing a Notice of Appointment of Advocate, however, this was contrary to Rule 23 which governs the change of advocates, or appearance in person. The applicant argues that a change of advocate cannot be regularized through a notice of appointment in this context and cites Civil Application No. 99 of 2018, *Mary Nchekei Paul v Francis Mundia Ruga*, in support.
16. The applicant concludes by submitting that any act done by a non-existent law firm is a legal nullity. He relies on the decision in *Benjamin Leonard MacFoy v United Africa Company Limited* [1961] 3 All ER 1169 to assert that, if an act is void, then it is in law a nullity. It is not only bad, but incurably bad and there is no need for an order of the court to set it aside as it is automatically null and void. He therefore urges the Court to strike out the Notice of Appeal as a matter of law and equity.
17. In response, the respondent submits that the applicant is barred by the equitable doctrines of laches and estoppel by conduct, having accepted the representation of Musyoka Wambua & Katiku Advocates without objection throughout the High Court trial. The applicant's current objection is thus belated, and the delay in raising it remains unexplained and is prejudicial.
18. The respondent maintains that Musyoka Wambua & Katiku Advocates was still in operation as of 6th May 2024, and the formal cessation was only filed on 28th May 2024. Therefore, the firm legally existed when the Notice of Appeal was filed, and the applicant's argument is factually incorrect. As regards the reliance on Rule 9(2)(a), the respondent submits that procedural rules must not override the right to substantive justice and invokes Article 159(2)(d) and Sections 3A and 3B of the [Appellate Jurisdiction Act](#), which call for justice to be administered without undue regard to procedural technicalities.
19. The respondent asserts that the applicant has not demonstrated any prejudice or injustice resulting from the use of the firm name in the filing of the Notice of Appeal. He argues that the applicant's invitation for the Court to exercise its discretion to strike out the Notice of Appeal is a misuse of judicial discretion, which should only be invoked in cases of clear, exceptional, and flagrant breaches of the law. The respondent cites *Mukenya Ndunda v Crater Automobile Ltd* [2015] eKLR, where the Court emphasized the cautious application of this power.
20. The respondent posits that the alleged professional misconduct, if any, is not a basis for striking out court pleadings, and should instead be referred to the Law Society of Kenya's disciplinary mechanisms.



Accordingly, the respondent urges the Court to uphold the validity of the Notice of Appeal and dismiss this Application as an abuse of court process and an attempt to defeat justice on procedural grounds.

21. The legal framework governing striking out of a Notice of Appeal is Rule 86 which provides that:

“A person affected by an appeal may, at any time, either before or after the institution of the appeal, apply to the Court to strike out the notice or the appeal, as the case may be, on the ground—(a) that no appeal lies; or (b) that some essential step in the proceedings has not been taken or has not been taken within the prescribed time:

Provided that an application to strike out a notice of appeal or an appeal shall not be brought after the expiry of thirty days after the date of service of the notice of appeal or record of appeal, as the case may be.”

22. An advocate is required to operate under their name, or a duly registered and existing firm in accordance with the *Advocates Act* and the Practice Rules. Rule 12 of the Advocates Practice Rules expressly prohibits an advocate from practising in the name of a firm that does not exist legally, or has ceased to exist. Furthermore, Section 35(1) of the *Advocates Act* mandates that any legal document prepared or signed by an advocate must bear the name and address of the advocate or their firm. Failure to comply renders such documents invalid and inadmissible.

23. Courts had consistently affirmed this position. For example in *Ngomeni Swimmers Limited v Katana Chara Suleiman* [2014] eKLR, Civil Appeal No. 253 of 2012 (Court of Appeal at Malindi), the central issue for determination was whether the suit in the High Court had been filed by an unqualified person through an unregistered or illegal law firm, and the legal effect of such filing. The Court of Appeal found that at the time of filing, the firm of Wesley John & Associates Advocates was not properly constituted in law, as its purported proprietor, Wesley John Kamau, was not recognized in the Roll of Advocates, nor did he hold a valid practicing certificate at that name.

24. The Court held that since Section 34 of the *Advocates Act* prohibits unqualified persons from preparing legal documents, and Rule 12 of the Advocates (Practice) Rules bars advocates from practising under fictitious names, the Court held that the suit was lodged by an unqualified person through an illegal outfit, rendering the plaint incurably defective and thus was properly struck out.

25. However, in the application before us the bone of contention is whether at the time of filing the Notice of Appeal the firm of Musyoka Wambua & Katiku Advocates, in whose name it was filed was in existence. First, we note that the respondent maintains that the firm was still in operation as at 6th May 2024, and the formal notice of cessation was only submitted to the Law Society of Kenya on 28th May 2024. Therefore, the firm legally existed when the Notice of Appeal was filed.

26. Secondly, Mr. Katiku was a duly qualified advocate, holding a valid practicing certificate and it was he who signed the Notice of Appeal, rendering the appeal process lawful. At this point we agree that any procedural irregularities alleged cannot vitiate the appeal, particularly in the absence of compromise to substantive justice. It is noted that the applicant acquiesced to representation by Musyoka Wambua & Katiku Advocates throughout the High court proceedings, including the judgment that was rendered in his favour. He cannot approbate and reprobate at the same time by holding on to that judgment if the process that produced it was illegal.

27. In the premise, we find that the Notice of Motion dated and filed on 6th May 2024 lacks merit and is hereby dismissed in its entirety.

Costs will abide the outcome of the appeal. It is so ordered.



DATED AND DELIVERED AT NAIROBI THIS 7TH DAY OF NOVEMBER, 2025

W. KARANJA

.....

JUDGE OF APPEAL

K. M'INOTI

.....

JUDGE OF APPEAL

L. ACHODE

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

