



Orion East Africa Limited v Ecobank Kenya Limited & another (Commercial Case 98 of 2014) [2025] KEHC 16207 (KLR) (Commercial and Tax) (7 November 2025) (Ruling)

Neutral citation: [2025] KEHC 16207 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE 98 OF 2014
MN MWANGI, J
NOVEMBER 7, 2025**

BETWEEN

ORION EAST AFRICA LIMITED PLAINTIFF

AND

ECOBANK KENYA LIMITED 1ST DEFENDANT

ONESMUS MACHARIA T/A WATTS AUCTIONS 2ND DEFENDANT

RULING

1. This Ruling is in respect to the issue of the plaintiff's legal representation. Mr. Ligami, learned Counsel for the 1st defendant indicated that the plaintiff is currently unrepresented by an Advocate and if Mr. Ruo Maina intends to act in this matter on the plaintiff's behalf, he must file the necessary documents. In response, Mr. Ruo Maina stated that the plaintiff's previous Advocates had withdrawn from the case and he accordingly sought leave of the Court to represent the plaintiff.
2. This matter was canvassed by oral submissions on 3rd March 2025. Mr. Ruo Maina submitted that he had filed a statutory declaration sworn on 10th January 2025, in which he affirmed that he had been granted leave to represent the plaintiff. He further submitted that on 27th November 2023, Hon. Tanui was notified that Mr. Mbugua Ng'ang'a had ceased from acting for the plaintiff and that he, Mr. Ruo Maina, had been introduced in the matter. He maintained that Hon. Tanui acknowledged his constitutional rights to represent himself and contended that the *Advocates Act*, Cap 16 of the Laws of Kenya, is inferior law.
3. Mr. Ligami, learned Counsel for the 1st defendant submitted that under Order 9 Rule 8 of the Civil Procedure Rules, 2010, Mr. Ruo Maina was required to indicate when leave of the Court had been granted to him. Mr. Ligami argued that on the date when Mr. Kipsigie appeared in Court and stated that Mr. Ruo Maina was acting in person for the plaintiff, no application had been filed by Mr. Maina



seeking leave to do so. Counsel further submitted that there appeared to be an entity purporting to act on behalf of the plaintiff and that correspondence written on behalf of the plaintiff by the said entity was always executed by both Mr. Ruo Maina and Ms Wamae.

4. Upon perusal of the Court record and the Case Tracking System, it is evident that the plaintiff was at all material times represented by the law firm of Mbugua Ng'ang'a & Company Advocates. However, on 27th November 2023, Mr. Isahi who was appearing for the plaintiff informed the Deputy Registrar that the law firm of Mbugua Ng'ang'a & Company Advocates was no longer on record for the plaintiff and that the plaintiff intended to act in person. Notably, on that date, the learned Deputy Registrar did not issue any directions or orders regarding the plaintiff's legal representation, but instead, she scheduled the matter for mention on 30th January 2024 for further directions. The record further demonstrates that from 30th January 2024 onwards, Mr. Ruo Maina has been appearing in this matter on behalf of the plaintiff under the guise that the plaintiff is acting in person.
5. It is trite law that a limited liability company is a distinct legal entity, separate from its members and directors and is capable of suing, and being sued in its own name. However, being an artificial person, a company cannot, unlike a natural person, appear in Court in person. It can only act either through an Advocate or an authorized officer or representative in accordance with the provisions of Order 9 Rules 1 and 2 of the Civil Procedure Rules, 2010, which provide that -

Order 9, rule 1 - Applications, appearances or acts in person, by recognized agent or by advocate

Any application to or appearance or act in any court required or authorized by the law to be made or done by a party in such court may, except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognized agent, or by an advocate duly appointed to act on his behalf:

Provided that -

- a. any such appearance shall, if the court so directs, be made by the party in person; and
- b. where the party by whom the application, appearance or act is required or authorized to be made or done is the Attorney-General or an officer authorized by law to make or to do such application, appearance or act for and on behalf of the Government, the Attorney-General or such officer, as the case may be, may by writing under his hand depute an officer in the public service to make or to do any such application, appearance or act.

Order 9, rule 2 - Recognized agents

The recognized agents of parties by whom such appearances, applications and acts may be made or done are -

- a. subject to approval by the court in any particular suit persons holding powers of attorney or an affidavit sworn by the party authorizing them to make such appearances and applications and do such acts on behalf of parties;
- b. persons carrying on trade or business for and in the names of parties not resident within the local limits of the jurisdiction of the court within which limits the appearance, application or act is made or done, in matters connected with such trade or business only, where no other agent is expressly authorized to make and do such appearances, applications and acts;



- c. in respect of a corporation, an officer of the corporation duly authorized under the corporate seal. Emphasis added.
6. From the above provisions, it is manifest that where a limited liability company seeks to act in person, it must do so through one of its officers who has been duly authorized by its Board of Directors under the company's corporate seal. Therefore, given that the plaintiff was previously represented by an Advocate, any transition into acting in person must comply with the provisions of Order 9 Rule 8(1) of the Civil Procedure Rules, 2010, which provides that -
- Where a party, after having sued or defended by an advocate, intends to act in person in the cause or matter, he shall give a notice stating his intention to act in person and giving an address for service within the jurisdiction of the court in which the cause or matter is proceeding, and the provisions of this Order relating to a notice of change of advocate shall apply to a notice of intention to act in person, with the necessary modifications.
7. From the record it is clear that neither the plaintiff nor the law firm of Mbugua Ng'ang'a & Company Advocates has complied with the requirements of Order 9 Rules 5 & 8 of the Civil Procedure Rules, 2010, in order for Mr. Ruo Maina to be deemed as being properly on record for the plaintiff. In addition, Mr. Ruo Maina has neither filed nor produced a Board resolution from the plaintiff company authorizing him to represent the plaintiff in these proceedings.
8. In the circumstances, it is my finding that the law firm of Mbugua Ng'ang'a & Company Advocates is still legally on record for the plaintiff in this matter, until there is full compliance with the provisions of Order 9 of the Civil Procedure Rules, 2010, in respect to change in the plaintiff's legal representation. Accordingly, Mr. Ruo Maina is found not to be properly on record for the plaintiff. Any pleadings filed by him on the plaintiff's behalf are hereby struck out and expunged from the Court record. Costs shall be in the cause.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT NAIROBI ON THIS 7TH DAY OF NOVEMBER 2025.
RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

NJOKI MWANGI

JUDGE

In the presence of;-

Mr. Ruo Maina (found not to be properly on record for the plaintiff)

Mr. Ligami for the defendants

Ms B. Wokabi – Court Assistant.

