

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT
NAIROBI
MISC.APPLICATION NO. E413 OF 2025

SAJ CERAMIC LIMITED.....
.....APPLICANT

VERSUS

EVANS KYALO KIILU.....
RESPONDENT

RULING

1. This ruling relates to the Respondent’s Notice of Preliminary Objection dated 12th November, 2025, seeking the striking out of the Notice of Motion and the entire Miscellaneous Application filed herein on the ground that the Firm of **M/S WERU MUNYORO & COMPANY ADVOCATES** purport to act for the Applicant in clear contravention of the mandatory provisions of Order 9 Rule 9 of the Civil Procedure Rule, 2010.

2. The Respondent states that the firm of **M/S DANIEL & KENNETH ADVOCATES LLP** was previously on record for the Applicant and that no application to come on record or consent between the firms of **M/S WERU MUNYORO & COMPANY ADVOCATES** and **M/S DANIEL & KENNETH ADVOCATES LLP** have been filed or served in accordance with the law before the institution of this application. It avers

that for this reason, all pleadings, applications, and documents filed by M/S WERU MUNYORO & COMPANY ADVOCATES are irregular, incompetent, and *void ab initio*.

- 3.** The Respondent further contends that the Applicant's application for leave to file an appeal out of time offends the doctrine of territorial competence, which requires that proceedings be instituted before a court vested with proper geographical and subject matter jurisdiction.
- 4.** It avers that the matter giving rise to the intended appeal was heard and determined at the Mavoko Magistrates' Court, and the cause of action arose within that territorial jurisdiction, where the Applicant's company is also situated, and that as a consequence, any appeal therefrom properly lies before the Employment and Labour Relations Court at Machakos, which exercises supervisory and appellate jurisdiction over Mavoko, and not before the Employment and Labour Relations Court at Nairobi.
- 5.** The Respondent argues that filing the application before the ELRC in Nairobi amounts to forum shopping, and is an abuse of the court process, violating the principles of fair administration of justice under Article 159(2)(a) and (b) of the Constitution.
- 6.** The Respondent contends that the entire Miscellaneous Application and its related proceedings are fatally defective, incompetent, and an abuse of the court's process, and should therefore be struck out with costs.

7. Parties urged the objection orally on 25th November, 2025. The Respondent reiterated the averments in their Notice of Preliminary Objection, urging the court to strike out the Applicant's application.
8. The Applicant opposed the objection arguing that Order 9 Rule 9 has no application in this matter on the basis that this is a new matter before this court and is not proceeding on the lower court file. The Applicant's counsel asserts that this is a new matter and that they do not need leave to represent the Applicant.
9. On the issue of territorial jurisdiction, the Applicant contends that Rule 6 of the Employment and Labour Relations Court (Procedure) Rules, sets out where a suit should be filed. It avers that the Respondent operates in Nairobi, and hence the proceedings are properly before this court. It is counsel's further assertion that there are no rules on where an appeal should be filed, and that the issue is not fatal to the application.

Determination

10. The objection raises two issues for determination:
 - i. Whether the firm of M/S WERU MUNYORO & COMPANY ADVOCATES is properly on record in light of Order 9 Rule 9 of the Civil Procedure Rules, 2010.
 - ii. Whether this court (ELRC Nairobi) lacks territorial jurisdiction to hear and determine the Applicant's application.

**Whether the firm of M/S WERU MUNYORO & COMPANY
ADVOCATES is properly on record**

- 11.** It is now settled that a Preliminary Objection must be founded on pure points of law, capable of disposing of the matter without having to ascertain contested facts. (***See Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd [1969] EA 696.***)
- 12.** Order 9 Rule 9 states that a change of advocates after judgment shall only be effected by consent between the outgoing and the incoming advocates filed in court, or by formal application. The rule applies where a judgment has been delivered, and a party seeks to change advocates in that same matter.
- 13.** The Respondent argues that because the Applicant was previously represented in the lower court by M/S DANIEL & KENNETH ADVOCATES LLP, any new firm filing documents post judgment must comply with Order 9 Rule 9.
- 14.** The Applicant argues that this is a fresh miscellaneous application for leave to appeal out of time and not a proceeding within the lower court file. Courts have consistently held that Order 9 Rule 9 does not apply when a new cause is filed in a different court, even if it is related to a previous matter. In ***Ngoni v Karanja & Another (2021) eKLR***, it was held that Order 9 Rule 9 does not apply to a new miscellaneous application filed separately from the concluded matter.

- 15.** Further in ***George Mbugua Muthoni v Toyota Kenya (2020)*** eKLR, the court held that Order 9 Rule 9 only governs representation within the same proceedings, not in a distinct appellate or miscellaneous file.
- 16.** In light of the foregoing, I find that the Applicant's application is a new and independent miscellaneous application, and there is no requirement for counsel to seek leave under Order 9 Rule 9 to appear in a new matter as the one before this court.
- 17.** The Respondent's objection on this ground therefore fails.

Whether this court (ELRC Nairobi) has territorial jurisdiction to hear and determine the Applicant's application

- 18.** The Respondent argues that the cause of action, the trial court (Mavoko), and the Applicant's business are all within Machakos County, hence the appeal and the related applications must be filed before ELRC Machakos, and not Nairobi.
- 19.** Rule 6(1) of the Employment and Labour Relations Court (Procedure) Rules, 2024 provides that a suit shall be instituted in the registry within the region where the cause of action arose, subject to the Court's discretion.

20. The intended appeal arises from Mavoko Magistrates' Court, which is in Machakos County. Mavoko is within the territorial jurisdiction of ELRC Machakos, which hears appeals arising from employment disputes in that region.
21. Administratively, however, urgent matters from ELRC Machakos are heard in Nairobi for the simple reason that there currently is no sitting judge in Machakos, and to send parties to Machakos is tantamount to sending them out of the seat of justice.
22. It is enough in my view that the court is clothed with jurisdiction to hear and determine the application before it.
23. In whole, I find the Preliminary Objection devoid of merit and is hereby dismissed.
24. Costs shall abide the application.
25. Orders accordingly.

SIGNED, DATED, AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 18TH DAY OF DECEMBER, 2025.

**C. N. BAARI
JUDGE**

Appearance:

Mr. Weru present for the Applicant

Mr. Mutonyi present for the Respondent

Ms. Esther S-C/A

ORIGINAL