

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL DIVISION
CIVIL SUIT NO. E061 of 2024
IN THE MATTER OF ADVOCATE FOR BOTH PARTIES IN A
JOINT VENTURE
IN THE MATTER OF THE JOINT VENTURE AGREEMENT
DATED 23RD SEPTEMBER 2023 AND AMENDED ON 30TH

OCTOBER, 2023

BETWEEN

ISKY HOLDINGS LIMITED.....
PLAINTIFF/APPLICANT

VERSUS

MICHAEL OWANO T/AOWANO &
ASSOCIATES ADVOCATES..... 1ST
DEFENDANT/RESPONDENT

NATIONAL BANK OF
KENYA LTD 2ND
DEFENDANT/RESPONDENT

AND

HUDGENS COSTRUCTION CO. LTD.....1ST INTERESTED
PARTY

EMMANUEL OSORE..... 2ND INTERESTED
PARTY

RULING

(On Preliminary Objection Dated 25/07/2025 by 1st Defendant)

1. The Plaintiff herein filed an **Originating Summons dated 11/03/2024** seeking orders against the two Defendants herein and the two interested parties, alleging breach of a professional undertaking by the 1st Defendant in respect of a joint venture agreement dated 23/09/2023 entered into between itself (Plaintiff) and the Defendants wherein the 1st Defendant law firm acted for both parties from which the professional undertaking is anchored.
2. The Plaintiff therefore sought several orders against the Plaintiff including an order compelling the 1st Defendant to pay to the Plaintiff a sum of USD 400,000/= and to render detailed account of the operations of the escrow account at the 1st Defendants USD A/C held at National Bank
3. Alongside the Originating Summons, the Plaintiff filed a **Chamber Summons Application Dated 11/03/2024** as stated at paragraph 1 above.
4. Upon service, the 1st Defendant filed a motion dated 9/06/2025 challenging the locus of the Plaintiff as well as a Preliminary Objection of an even date, seeking that it should be heard and determined first.
5. The 1st Interested Party also filed a Preliminary Objection dated 25/07/2025 by its Advocates.

6. The 2nd Defendant indicated its intention not to participate in the Preliminary Objection by the 1st Respondent and the 1st Interested party.
7. The court issued directions on 30/07/2025 for disposal of the Preliminary Objection; that the Respondents in both POs file their responses submissions on the two preliminary Objection. As at 8th February, 2026 only the 1st Defendant had filed its submissions.

Preliminary Objection dated 9/06/2025 by the 1st Defendant

8. The 1st Defendant's Preliminary Objection is based on one issue; that the Applicant a foreign company not registered in Kenya did not and/or does not have the locus standi to file the suit by virtue of **Section 974** of the **Companies Act No. 17 of 2015** as read together with the Civil Procedure Act and Rules.
9. The 1st Respondent/Defendant filed its submissions **dated 25/09/2025** in support of its Preliminary Objection, arguing that the Plaintiff, being a foreign company has failed to register under Section 974 of the Companies Act in defiance of mandatory requirements, a fatal defect that strikes out the root of the Plaintiff's legal standing.
10. **Section 974** provides:-

When foreign Company may carry on business in Kenya

1) A foreign Company shall not carry on business in Kenya unless

a) It is registered under this part; or

b) It has applied to be so registered and the application has not been dealt with within the period prescribed for purposes of this section. If a foreign company carries on business in Kenya in contravention of subsection.

(i) The company and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five million shillings.

11. **Section 838** of the Act prescribe as follows:-

Registrar to allocate unique number to each foreign company registered under this Act.

1) The Registrar shall allocate to every foreign company registered under this Act 9 unique number to be called the company's registered number;

2) The registrar shall ensure that the number allocated to a foreign company is in a form that consists on one or more sequences of figures or letters.

3) On adopting a new form of registered numbering, the Registrar may make such changes to existing

registered numbers of foreign companies as appear to the Registrar to be necessary.

4) A change of a foreign company's registered number has effect from the date on which the Registrar notifies the company of the change.

12. I have considered the **Plaintiffs Originating Summons dated 11/03/2024** and documents as filed in support of the OS seeking orders against the Defendants and the interested parties. I have also perused the joint venture agreement between the parties dated 23/09/2023.
13. It is clearly stated that the plaintiff, is a Limited Liability Company incorporated in the Republic of Israel and situated at Tel-Aviv in Israel.
14. I have not seen any evidence of compliance by the Plaintiff of provisions of Section 974 and 838 of the Company's Act, which provisions are mandatory without which a foreign company, as is the Plaintiff, carries on business in Kenya in contravention of Kenya statutory mandates in respect of trading and or carrying business in Kenya.
15. I have taken guidance from the decision in the case of **Turn Key International Trade Limited v. Gunmatt Limited (sundip Shah)[2024] KEHC 2701 (KLR)** wherein the court (Njoki Mwangi J.) held that:- Par. 15 -

“A claim that one lacks locus standi contests a party’s right to a trial by a court, and if a decision is rendered in favour of the said argument, the suit may be dismissed. A claim that a party lacks locus standi is a purely legal matter that must be brought up and resolved as soon as possible. In the circumstances, I find the Preliminary Objection as filed is proper as it raises pure points of law....”

16. Upon the above, I am persuaded that the 1st Defendant’s Preliminary Objection meets the legal threshold of a Preliminary Objection as held in the case of **“The Owners of Motor vessel Lilian S” v. Caltex Oil Kenya Ltd [1989] eKLR,** and **Mukisa Biscuit manufacturing Company Limited V. West End Distributors Limited [1969].**
17. I have carefully, considered the pleadings filed by the Plaintiff, the Replying affidavits, supplementary affidavits and all documents filed by the parties hereto.
18. The court in the case of **Biosystems Consultants v. Nyali Links Arcade [2023] KEHC 21068 (KLR),** stated that in determining a Preliminary Objection only 3 documents are required in addition to the constitution the impugned law, the plaint and the Preliminary Objection that if the defence is referred to, then the Preliminary Objection is untenable.

19. Having looked at the documents referred to, I find merit in the Preliminary Objection as it raises pure points of law. There is clearly no dispute on the facts requiring any further enquiry.
20. For the foregoing and without belaboring further, the 1st Defendant's Preliminary objection is upheld.
- 21. Consequently, the suit as filed by way of an Originating Summons dated 11/03/2024 is hereby struck out with costs to the 1st Defendant.**
- 22. Flowing from the above decision, I find no need to interrogate and determine the merit or otherwise of the Preliminary objection date 25/07/2025 raised by the 1st interested party.**

Orders Accordingly.

Delivered Dated and Signed at Nairobi this 12th day of February, 2026.

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JANET MULWA.
JUDGE

ORIGINAL