



**Nes Poly Pack Limited v Equity Bank [K] Limited (Miscellaneous Application E854 of 2023)
[2026] KEHC 1542 (KLR) (Commercial and Tax) (13 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 1542 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E854 OF 2023
FG MUGAMBI, J
FEBRUARY 13, 2026**

BETWEEN

NES POLY PACK LIMITED APPLICANT

AND

EQUITY BANK [K] LIMITED RESPONDENT

RULING

Introduction and Background

1. This Ruling is in respect of the preliminary objection dated 7th July 2025. The objection arises in response to the Notice of Motion dated 19th June 2025 filed by the applicant, Nes Poly Pack, seeking injunctive reliefs against the respondent, the Bank, restraining it from dealing with the property known as Kajiado/KAputiei North/36096. The application is supported by the affidavit of Samuel Gutu Maina who avers that the Bank has advertised the property for sale without following proper legal procedure and in disregard of the consent order adopted by this Court on 28th February 2024.
2. The Bank contends that the application is fatally defective as it offends Rule 39(1) of the Court Annexed Mediation Rules. Specifically, the Bank argues that the application seeks to set aside or vary an order arising from a Mediation Settlement Agreement (MSA) without first seeking and obtaining leave of the Court. On this basis, the Bank urges the Court to strike out the application.
3. Nes Poly Pack, in its submissions, argues that the issue of the MSA is res judicata. However, upon careful consideration of the record, including the ruling of this Court delivered on 13th June 2025, it is evident that the Court did not address the validity or enforceability of the MSA. That ruling was confined to the issue of counsel's noncompliance with Order 9 Rule 9 of the Civil Procedure Rules. Accordingly, the preliminary objection is properly before this Court.



4. The terms of the MSA dated 31st January 2024 appear to me to be clear and unequivocal:
 - i. The Debt (the Principal and Interest) be cleared by the Plaintiff on or before 31st May,2024;
 - ii. The Plaintiff will continue to pay Kshs.2.3Million to the bank;
 - iii. In default of settlement of the debt by or before 31st May 2024.the bank will independently proceed to recover the debt without further reference to the Plaintiff;
 - iv. The Plaintiff agrees not to seek any interim relief; and
 - v. Each party to bear its own costs.
5. This agreement was adopted as a judgment of the Court on 12th February 2024, thereby acquiring the force of a decree, and rendering the matter as settled.
6. That said, Order 39 Rule 1 of The Civil Procedure (Court-Annexed Mediation) Rules provides that:
 - “(1) No application for setting aside of an order or decree arising from a mediation settlement agreement shall be filed except with the leave of court.
 - (2) An application for leave under subrule (1) shall be supported by an affidavit detailing the grounds upon which the applicant intends to rely in setting aside the order or decree.”
7. The language of the Rule is peremptory. Leave of Court is a jurisdictional prerequisite. Without such leave, any application purporting to set aside or vary a decree arising from a mediation settlement agreement is incompetent ab initio. NES POLY PACK’s application of 19th June 2025, by seeking to restrain the Bank from exercising its contractual and court-sanctioned right of recovery, is in substance an attempt to reopen, review, or disregard the MSA, and particularly order No 3, yet, no leave of Court was sought or obtained. The application therefore offends Rule 39(1) and is fatally defective.

Disposition

8. For the foregoing reasons, I find the Preliminary Objection meritorious. The Notice of Motion dated 19th June 2025 is hereby struck out for being incompetent. Costs shall follow the event. The respondent, the Bank, is awarded the costs of the application.

DATED, SIGNED AND DELIVERED IN NAIROBI THIS 13TH DAY OF FEBRUARY 2026.

F. MUGAMBI

JUDGE

Delivered in presence of:

Mr Mbaji for the defendants

Ms Obiria HB for Mr Muhatia for the applicants

Court Assistant: Lillian

