

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**COMMERCIAL AND TAX DIVISION**  
**MISC.CAUSE NO. E376 OF 2022**

**OWINO KOJO & CO.**  
**ADVOCATES.....ADVOCATE**

**VERSUS**

**SIFA INSURANCE BROKERS**  
**LIMITED.....CLIENT**

**(IN LIQUIDATION)**

**BELL ESTATE**

**AGENCY LIMITED.....PROPOSED 2<sup>ND</sup>**  
**RESPONDENT/ APPLICANT**

**PAUL DEBACKO GOGO.....PROPOSED**  
**3<sup>RD</sup> RESPONDENT**

**ROBERT MUMBO GOGO.....PROPOSED**  
**4<sup>TH</sup> RESPONDENT**

**RULING**

**Background**

- 1.The advocate filed an advocate-client bill of costs dated 13.5.2022 against **Sifa Insurance Brokers Limited (In Liquidation)** seeking Kshs. 4,289,224.24/-.
- 2.Through a ruling dated 31.10.2022, the taxing officer taxed the bill of costs at Kshs. 169,580.40/-. A certificate of costs dated 8.11.2022 was subsequently issued. In both,

**Sifa Insurance Brokers Limited** is substituted with **Bell Estate Agency Limited**.

3.The advocate filed a notice of motion dated 2.8.2023 seeking entry of judgment in terms of the certificate of costs. He also filed a notice of motion dated 3.2.2024 seeking joinder of the proposed 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents in this matter. On 24.7.2024, the court (**Hon. Mabeya J.**) directed that both applications be responded to.

4.Through a ruling dated 14.1.2025, the court (**Hon. Muteti J.**) allowed the advocate's application for entry of judgment in terms of the certificate of costs.

5.The court did not consider the advocate's application for joinder of the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> proposed respondents.

6.This ruling is therefore in respect of the residual issue of joinder of the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> proposed respondents and the issue of substitution of **Sifa Insurance Brokers Limited** with **Bell Estate Agency Limited**.

7.The issues emanate from the two applications under consideration filed by the advocate and the 2<sup>nd</sup> proposed respondent.

**Advocate's application for joinder**

8.The advocate filed the notice of motion dated 3.2.2024, under **Order 1 Rules 3 and 10 (2) of the Civil Procedure Rules**, seeking joinder of **Bell Estate Agency Limited, Paul Debacko Gogo and Robert Mumbo Gogo** in this suit as respondents.

9.The application is supported by the advocate's affidavit sworn on 3.2.2024 and written submissions dated 7.9.2024.

10.The application is premised on the grounds that the respondents instructed the advocate to represent **Sifa Insurance Brokers Limited** in **Nairobi High Court Commercial Misc. Cause No. E145 of 2016** culminating into the Advocate/ Client bill of costs dated 13.5.2022 at Kshs. 169,580.40/-.

11.The advocate stated that **Bell Estate Agency Limited** is a subsidiary of **Sifa Insurance Brokers Limited** and that **Paul Debacko**

**Gogo and Robert Mumbo Gogo** are directors of both companies.

12.The advocate stated that the **Sifa Insurance Brokers Limited** has always instructed the advocate through **Paul Debacko Gogo and Robert Mumbo Gogo** and has always paid legal fees in all the matters through which the advocate represented the respondents.

13.The advocate asserted that the proposed respondents have severally evaded paying legal fees arising from their instructions on grounds that the 1<sup>st</sup> respondent is deceased, that the 1<sup>st</sup> and 2<sup>nd</sup> respondents are separate legal entities and that the parties had an agreement on payment of legal fees and that they have paid all the legal fees due.

14.The advocate argued that having the proposed respondents joined in the suit will enable the court to effectually and completely adjudicate upon and settle all questions in the matter. That in its in the interests of fairness and justice that the orders be sought.

## **Response**

15.The 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> proposed respondents opposed the application through replying affidavits sworn on 2.2.2024 and 6.6.2024 and primary and supplementary written submissions dated 23.7.2024 and 10.10.2024.

16.Their main contentions are: -

- (i) The application for joinder is misplaced as the subject suit application being an entry of judgment and issuance of decree pursuant to an erroneous certificate of costs. The reliefs do not arise out of the same facts/ transaction.
- (ii) The advocate has failed to demonstrate any just or probable cause to an order of substitution and/ or addition of parties to the subject application.
- (iii) The 1<sup>st</sup> and 2<sup>nd</sup> respondents are legally and factually not subsidiaries of each other; are separate corporate bodies with separate liabilities.

17.The proposed respondents relied on: -

**(1) Peter O. Ngoge T/A O P Ngoge & Associates v AMMU Investment Company Limited (Miscellaneous Civil**

**Application 745 of 2009) 2012 KEHC  
1133 (KLR) (16 Nov 2012)**

**(2)Ukwala Supermarket v Jaideep Shah &  
Kamal Shah (Civil Suit 7 of 2016)  
[2022] KEHC 2207 (KLR) (22 February  
2022) (Ruling)**

**(3)Meme v Republic [2004] KLR 637**

**Proposed 2<sup>nd</sup> respondent's reference  
application**

**18.Bell Estate Agency Limited** filed the chamber summons dated 30.1.2025 primarily under **Rule 11 (1) and (4) of the Advocates Remuneration Order.**

19.It seeks: -

- (1) leave to lodge a reference out of time against the taxation ruling issued on 31.10.2022 and the certificate of costs dated 8.11.2022.
- (2) setting aside of the taxation ruling and the certificate of costs to the extent that it portrays it as the judgment debtor.
- (3) setting aside of the taxation ruling in *toto*.

20. The application is supported by the affidavit sworn by **Paul Debacko Gogo** on 30.1.2025 and primary and supplementary written submissions dated 21.3.2025 and 5.6.2025.
21. The advocate opposed the application through a replying affidavit sworn on 11.3.2025 and written submissions dated 30.5.2025.
22. The 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> proposed respondents' case is that the court's ruling of 16.1.2025 was premised on an erroneous certificate of costs in which the legitimate judgment debtor, **Sifa Insurance Brokers Limited (In liquidation)** was substituted by it.
23. The proposed respondents argued that **Bell Estate Agency Limited** is a separate and distinct entity from **Sifa Insurance Brokers Limited (In liquidation)**. That therefore, the learned taxing officer fell into error when she executed the erroneous certificate of costs.
24. The proposed respondents highlighted that **Sifa Insurance Brokers Limited** is insolvent and it faulted the advocate for cunningly substituting it. It urged the court to allow the orders sought and submitted that the court

should not be seen to be condoning illegality and fraud on the advocate's part by allowing him to enforce the certificate of costs against it unfairly and deceptively.

25. The proposed respondents relied on: -

(1) **Republic v Kenyatta University & another Ex parte Wellington Kihato Wamburu [2018] eKLR**

(2) **Belinda Murai & 9 others v Amos Wainaina [1979] eKLR**

(3) **Achola & 2 others v Otieno (Miscellaneous Civil Application E006 of 2024) [2024] KEHC 11483 (KLR) (30 September 2024) (Ruling)**

(4) **Salomon v Salomon [1897] AC 78**

(5) **Victor Mabachi & Anor v Nurturn Bates Ltd NRB CA Civil Appeal No. 247 of 2005 [2013] eKLR**

### **Response**

26. According to the advocate, the ruling is against **Sifa Insurance Brokers Limited**, not **Bell Estate Agency Limited**. It asserted that it is legally and practically impossible to execute

the decree herein as against the applicant since it is not a party.

27.The advocate argued that the court cannot grant leave to the applicant to file a reference as sought given that it is not yet a party to these proceedings.

28.The advocate argued that the applicant should await determination of the application dated 3.2.2024 which seeks that it be joined in this suit as a respondent. He urged the court to dismiss the application dated 30.01.2025 with costs.

29.The advocate relied on **Speaker of the National Assembly v James Njenga Karume [1992] eKLR** to the effect that where there is a clear procedure for the redress of any particular grievance prescribed by the Constitution or an Act of Parliament, that procedure should be strictly followed.

30.The advocate relied on **Paul Victone Otieno v George Asuke & 2 others (Kisumu COA CAPPL No. E191 of 2024)** to submit that mere allegation of counsel's indolence is not enough to warrant extension of time.

## **Analysis and Determination**

31.I have considered the two applications, the responses, the submissions and the authorities.

### **Joinder**

32.The advocate sought joinder of the 2nd, 3rd and 4th proposed respondents on the basis **that Sifa Insurance Brokers Limited** has always instructed the advocate through **Paul Debacko Gogo** and **Robert Mumbo Gogo** and has always paid legal fees in all the matters through which the advocate represented the respondents. He claimed that **Bell Estate Agency Limited** is a subsidiary of **Sifa Insurance Brokers Limited** and that **Paul Debacko Gogo** and **Robert Mumbo Gogo** are directors of both companies.

33.The advocate argued that joinder of the proposed respondents will enable the court to effectually and completely adjudicate upon and settle all questions in the matter.

34.The proposed respondents argued that the application for joinder is misplaced as the subject suit application was for entry of

judgment and issuance of decree pursuant to a certificate of costs. They also argued that the advocate has failed to demonstrate any just or probable cause for their joinder. They further argued that the 1<sup>st</sup> respondent and the 2<sup>nd</sup> proposed respondents are not subsidiaries of each other; are separate corporate bodies with separate liabilities.

35. Are the proposed parties necessary for purposes of effectual and complete adjudication of the issues in controversy?

36. The advocate claimed the fact that it was the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents that instructed him on behalf of **Sifa Insurance Brokers Limited**, makes them necessary parties. He complained that the proposed respondents have severally evaded paying legal fees arising from their instructions on grounds that the 1<sup>st</sup> respondent is deceased, that the 1<sup>st</sup> and 2<sup>nd</sup> respondents are separate legal entities and that the parties had an agreement on payment of legal fees and that they have paid all the legal fees due.

37.I have considered the evidence produced by the advocate. The evidence comprises of pleadings in Misc Civ Appl 145 of 2016, HCCC 417 of 2017, Misc Appl E1083 of 2020, ELC No. 860 of 2015. The pleadings contain averments by **Paul Debacko Gogo** and **Robert Mumbo Gogo** that they are or were directors in both **Sifa** and **Bell Estate**.

38.The pleadings also show in 2012, **Sifa** entered into a joint venture agreement with **Kings Developers Limited** to develop for sale at a profit a Twelve Floor Storey Office Block, namely **Sifa Towers**. Upon completion of the development, Sifa was allocated two floors while **Kings Developers** was allocated the remaining floors. The advocate also produced a copy of the joint venture agreement. **Bell Estate** was incorporated by **Sifa** to manage the affairs of the 2 floors on its behalf.

39.The subject matter of this miscellaneous cause is a bill of costs flowing from instructions to represent **Sifa Insurance Brokers Limited** in **Nairobi High Court Commercial Misc. Cause No. E145 of 2016 (OS)**.

40. The evidence provided has established a nexus between the parties. Such nexus may be potent in an application for; examination of directors on the means or assets of the judgment debtor to pay the debt or raising corporate veil, or purposes of the Insolvency Act. It was argued that **Bell Estate** was incorporated by **Sifa** to manage the affairs of the 2 floors on its behalf; making it a perfect subject for insolvency law. See Cyton cases. A subsidiary company primarily incorporated to hold property belonging to the debtor may not be handled in a separate execution of a decree unless through the insolvency law; this prevents routing the principle of *pari pasu* of creditors in insolvency law.

41. But, the nexus between the parties herein may not be potent for purposes of joinder of parties in these proceedings for purposes of execution of the decree herein for the respondents are distinct persons-individuals and juristic- from the debtor company but may be reached through the statutory tools provided in the Civil Procedure Rules-examination of directors and

lifting of the veil- and the Insolvency Act- directors obligations, tracing and realizing debtor's assets. Two or more separate companies are not ipso fact fused into one merely because they have common directors. More is required to establish fraud, or that the subsidiary primarily holds property for the holding company etc. Therefore, I am not persuaded that the advocate has shown that the proposed respondents are should be joined as parties.

42. In more specific treatment, Bell Estate, Paul Debacko Gogo and Robert Mumbo Gogo were not joined as parties in **Nairobi High Court Commercial Misc. Cause No. E145 of 2016 (OS)**.

43. So far, there is no evidence showing that the instructions to represent Sifa in **Nairobi High Court Commercial Misc. Cause No. E145 of 2016 (OS)** were issued by **Bell Estate** on behalf of **Sifa**.

44. The evidence shows averments by **Paul Debacko Gogo** and **Robert Mumbo Gogo** to the effect that they are or were directors of

Sifa. However, since they were not joined as parties in **Nairobi High Court Commercial Misc. Cause No. E145 of 2016 (OS)**, there is no basis for joining them as parties in these proceedings.

45.As this application is not for examination of directors or lifting of the veil, or under the Insolvency Act, it is a candidate for dismissal.

46.Following the above findings, the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> proposed respondents' reference application dated 30.1.2025 also lacks the proper foundation as it has been filed by non-parties. It is therefore suitable for striking out.

47.As earlier noted, in the taxation ruling of 31.10.2022 and certificate of costs dated 8.11.2022, **Sifa Insurance Brokers Limited** is substituted with **Bell Estate Agency Limited**.

48.The court has not been shown a competent order for substitution of parties. Therefore, based on the preceding findings, there is an error on the face of the record.

49.**Section 99 of the Civil Procedure Act** is therefore applicable.

## **Disposal**

50.The advocates application dated 3.2.2024 is dismissed.

51.The proposed respondent's application dated 30.1.2025 is struck out.

52.No orders as to costs.

53.The taxation ruling of 31.10.2022 and certificate of costs dated 8.11.2022, be amended to read **Sifa Insurance Brokers Limited (In liquidation)** instead of **Bell Estate Agency Limited**.

**Dated, signed and delivered at Nairobi through Microsoft Teams online application this 19<sup>th</sup> day of February, 2026**

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**F. Gikonyo M**

**Judge**

**In the presence of: -**

**Ms. Jerop for Wachira for Applicant**

**Owino for Respondent**

**CA- Ivan/Aggrey**

