

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;

7. In the case of Carolyne Mpenzwe Chipande v Wanje Kazungu Baya [2014] eKLR, Meoli, J. had occasion to consider the import of the above provisions and stated:

19. The foregoing issue was not canvassed before me and there is not sufficient material to enable me draw any conclusions. Be that as it may, the wording of Order 9 rule 1 and 2 of the Civil Procedure Rules leaves no doubt that the court has wide discretion in determining whether or not to allow an agent to appear or do any act in a suit. That discretionary power must be invoked by way of an application and is exercised judicially. No party should presume to act or appear before the court merely on the basis of the power of attorney without first obtaining the court's approval, howsoever sought. The appellant believed himself properly authorized by the power of attorney alone to act on behalf of the donor. That was an erroneous understanding of the rules.

8. I fully concur with the learned Judge. The Plaintiff herein presumed to file the present suit only on the basis of the power of attorney donated to him, without first obtaining the Court's approval.

9. The Court notes that this issue was not raised by the Defendants. However, the requirement to seek and obtain approval is not a procedural technicality that can be overlooked. It goes to the root of the capacity of the Plaintiff as a recognized agent to bring the suit or to act on behalf of the donor of the power of attorney. Without obtaining the approval of this Court to file this suit on behalf of his father, the Plaintiff lacks *locus standi*. This alone renders the suit defective, thereby stripping the Court of the jurisdiction to entertain the same.

10. In Macfoy vs. United Africa Co. Ltd [1961] 3 All E.R. 1169 Lord Denning delivering the decision of the Privy Council stated:

If an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the Court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the Court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse.

11. I adopt the holding in the cited case. Having found as I have that the suit is defective, it follows that the Application dated 25.3.25 which is anchored on a defective suit is also defective.
12. In the end and for the reasons stated, both the Application dated 25.3.25 and the entire suit are struck out.

DATED SIGNED and DELIVERED in Malindi this 10th day of April 2026

M. THANDE
JUDGE