



REPUBLIC OF KENYA



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**Board of Trustees, Kenya Broadcasting Corporation Staff Retirement
Benefits Scheme v Morara Omoke Advocates (Civil Application
E293 of 2025) [2025] KECA 1192 (KLR) (4 July 2025) (Ruling)**

Neutral citation: [2025] KECA 1192 (KLR)

REPUBLIC OF KENYA

IN THE COURT OF APPEAL AT NAIROBI

CIVIL APPLICATION E293 OF 2025

DK MUSINGA, W KARANJA & K M'INOTI, JJA

JULY 4, 2025

BETWEEN

**THE BOARD OF TRUSTEES, KENYA BROADCASTING CORPORATION
STAFF RETIREMENT BENEFITS SCHEME APPLICANT**

AND

MORARA OMOKE ADVOCATES RESPONDENT

*(Being an application for leave to appeal from the Ruling of the
Employment and Labour Relations Court at Nairobi (Ocharo
Kebira, J.) dated 30th April 2025 in (ELRC Case No. E002 of 2025)*

RULING

1. The firm of Morara Omoke Advocates (the respondent)) represented the Board of Trustees, Kenya Broadcasting Corporation Staff Retirement Scheme), the applicant, in a labour matter before the Employment and Labour Relations Court (ELRC). After the conclusion of the case, the respondent served the applicant with an Advocate-Client Bill of Costs which the applicant contested. The Bill was taxed by the Taxing Master, Hon. Aziza Ajwang vide a ruling dated 22nd December 2023.
2. The respondent, being dissatisfied with the taxation on some of the items, filed a reference before the learned Judge (Ocharo Kebira, J.). In the ruling rendered on 30th April 2025, the learned Judge allowed the reference on terms.
3. Being aggrieved, the applicant has now moved to this Court vide the notice of motion dated 12th May 2015 which is expressed to be brought under, inter alia, rules 41(1)(b), 44 and 45 of the Court of Appeal Rules, and Schedule 6, paragraph 11(B) of the Advocates Remuneration Order, seeking four prayers. Prayer 2 and 3 which sought orders of stay of execution of the ruling of Ocharo Kebira, J. were withdrawn after the applicant's attention was drawn to the fact that the Court lacks jurisdiction to



entertain prayers based on rule 5(2)(b) of the Court of Appeal Rules, absent of a notice of appeal filed pursuant to rule 77 of the Court of Appeal Rules.

4. The prayer for determination before us seeks leave to appeal the ruling of Ocharo Kebira, J. The application is predicated on some 11 grounds on its face and supported by an affidavit sworn by Martin Nyongesa King'asia on 12th May 2025.
5. The application is opposed though a thirty- three paragraph affidavit sworn by Morara Omoke, and a notice of preliminary objection dated 15th May 2025. The preliminary objection challenged the jurisdiction of this Court to entertain the application and for that reason, it had to be heard and determined, in limine.
6. The preliminary objection was urged before us on 10th June 2025 by Mr. Nyaga, learned counsel for the respondent. Ms. Impano, learned counsel for the respondent having not filed any response to the preliminary objection informed the Court that she would respond to it orally, as the same raised pure points of law. The objection was to the effect that the application violates Order 11 of the Advocates Remuneration Order and rule 41 of the Court of Appeal Rules. According to the respondent, the applicant ought to have sought the leave to appeal from the ELRC, which it did not, and it has, therefore, no standing before this Court. The notice of motion is said to be vexatious, scandalous and an abuse of the court process, and the same ought to be dismissed.
7. On her part, Ms. Impano urged that the Court has jurisdiction to deal with the matter. She stated that after the impugned ruling was delivered, counsel for the applicant applied for leave orally but the learned Judge asked counsel to file a formal application seeking leave. Instead of filing the application as directed by the learned Judge, the applicant decided to file the application now before this Court.
8. We have considered the preliminary objection. There is no contest that the same is premised on a pure point of law; which is whether the applicant is properly before this Court absent leave as stipulated under rule 11 of the Advocates Remuneration Order . The said rule provides as follows:

“3. Any person aggrieved by the decision of the Judge upon any objection referred to such Judge under subsection (2) may, with leave of the Judge, but not otherwise, appeal to the Court of Appeal. (Emphasis applied).

9. Admittedly, there was no leave granted by the learned Judge to allow the applicant to move to this Court. The applicant's response was that they sought leave orally, but they were told to file a formal application. To start with, we note that that statement by counsel was a statement from the bar as there is no replying affidavit, and counsel could only address points of law.
10. Be that as it may, Mr. Nyaga conceded that the applicant sought leave but the Judge told counsel to make a formal application, which was not done, and the issue of leave was not, therefore, canvassed before the Judge. Does the applicant have recourse under rule 41 of the Court of Appeal Rules? Rule 41 of the Court of Appeal Rules provides:

“(1) In a civil matter—

- a. where an appeal lies with the leave of the superior court, application for such leave may be made—
 - i. informally at the time when the decision against which it is desired to appeal is given; or



- ii. by motion or chamber summons according to the practice of the superior court, within fourteen days of such decision;
- b. where an appeal lies with the leave of the Court, application for such leave shall be made—
 - i. in the manner laid down in rules 44 and 45 within fourteen days after the decision against which it is desired to appeal; or
 - ii. where application for leave to appeal has been made to the superior court and refused, within fourteen days after such refusal.” [Emphasis ours].

11. It is clear from the above rule that an applicant can only invoke rule 41(1)(b)(ii) where an application for leave has been made and denied before the learned Judge whose ruling is challenged. In this case the learned Judge did not refuse to grant leave, but asked the applicant to file a formal application for his consideration. The applicant declined the invitation to do so, and instead rushed to this Court with the present application.

12. In our view, the application before us was premature as the applicant could only move this Court upon refusal of leave by the learned Judge. The applicant ought to have complied with the learned Judge’s directions to file a formal application and if leave was denied, then, and only then could the door be opened for him to move to this Court. As the matter stands now, this Court lacks jurisdiction to entertain this matter. We find the preliminary objection with merit and uphold it, with the result that the notice of motion dated 12th May 2025 is hereby struck out with costs to the respondent.

DELIVERED AND DATED AT NAIROBI THIS 4TH DAY OF JULY 2025.

D. K. MUSINGA, (PRESIDENT)

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JUDGE OF APPEAL

W. KARANJA

.....

JUDGE OF APPEAL

K. M’INOTI

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR

