



**Ndetu v Silver Hawk International Limited (Cause 638 of 2016)
[2024] KEELRC 366 (KLR) (28 February 2024) (Ruling)**

Neutral citation: [2024] KEELRC 366 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 638 OF 2016
L NDOLO, J
FEBRUARY 28, 2024**

BETWEEN

STEPHEN NDOLE NDETU CLAIMANT

AND

SILVER HAWK INTERNATIONAL LIMITED RESPONDENT

RULING

1. By his Notice of Motion dated 1st August 2023, the Claimant seeks an order to compel the Directors of the Respondent to attend court for examination as to the assets and means of satisfying the judgment herein and produce books of accounts and other documentary evidence showing the same.
2. The Claimant further pursues an order compelling the Directors to personally satisfy the decree issued on 17th January 2020.
3. The application is supported by the Claimant's own affidavit and is premised on the following grounds:
 - a. That after learning of the judgment, the Respondent moved from its known address and hid its property in an effort to defeat execution of the judgment;
 - b. That the Claimant is sure to suffer irreparable loss due to the Respondent's action;
 - c. That the Claimant has failed to locate attachable assets of the Respondent;
 - d. That granting of the application will not prejudice the Respondent in any way;
 - e. That it would be in the interest of justice for the Claimant to reap the fruits of the decree herein.
4. In his affidavit in support of the application, the Claimant depones that on 17th January 2020, Makau J delivered judgment in his favour in the sum of kshs. 1,567,569.25 plus costs and interest.



5. He adds that his request to the Respondent to settle the decretal sum has gone unanswered.
6. The Claimant further depones that the Respondent has moved from its known address and there is no known property of the Respondent that can be attached to satisfy the decree.
7. The Claimant accuses the Respondent's Directors who he names as; Christopher Musau Makau and Jones Mitu Kamau of abusing the corporate veil, by hiding the Respondent's property in an effort to defeat execution of the decree. He produced a CR 12 dated 4th February 2015 to confirm this assertion.
8. The Respondent filed Grounds of Opposition dated 18th September 2023, stating as follows:
 - a. That the application is fatally defective as it is presented by an Advocate who is not properly on record as provided in law;
 - b. That the application is premature as there is no evidence demonstrated in the affidavit, of an attempted attachment of the Respondent's assets;
 - c. That the true purport of the application, in the absence of any demonstrable exercise of execution known in law, is calculated towards embarrassing the Respondent's Directors unduly;
 - d. That there is no established evidence that the Respondent's Directors are abusing the corporate veil.
9. The first ground set out by the Respondent in its opposition to the Claimant's application is that the application has been brought by an Advocate who is not properly on record.
10. In the submissions filed on behalf of the Respondent, reference was made to Order 9 Rule 9 of the [Civil Procedure Rules](#) which provides as follows:
 - (9) When there is a change of Advocates, or when a party decides to act in person having previously engaged an advocate, after judgment has been passed, such change or intention to act in person shall not be effected without an order of the court-
 - a. upon an application with notice to all parties; or
 - b. upon a consent filed between the outgoing advocate and the proposed incoming advocate or party intending to act in person as the case may be.
11. The Respondent relies on the decision in [Mohamed Shee Bwana v Public Trustee](#) [2015] eKLR where it was held that the provisions of Order 9 Rule 9 are couched in mandatory terms.
12. In [Jackline Wakesho v Aroma Café](#) [2014] eKLR it was held that failure to observe the requirements of Order 9 Rule 9 of the [Civil Procedure Rules](#) is a matter of jurisdiction and not one of procedural technicality.
13. The Court in Jacline Wakesho (*supra*) stated as follows:

“ Although the...objection appears like a technical procedural issue, this court finds that the default by the applicant goes to the jurisdiction of the court to entertain the motion. The reason for the foregoing reasoning is that the court has no jurisdiction to preside over incompetent proceedings filed by counsel who lacks locus standi. The court has been asked to invoke the oxygen principle under Section 1A and 1B of the *Civil Procedure Act* and entertain the motion. The court will not however do that. The reason for the foregoing is twofold. Firstly, there are several judicial pronouncements cited by the claimant which



show that courts have over time declined to entertain proceedings filed by new advocates appointed after judgment without complying with Order 9 rule 9...”

14. In the present case, it is evident that the subject application was filed by a new Advocate after judgment, without leave of the Court. In the result application collapses and is disallowed with an order that each party bear their own costs.
15. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 28TH DAY OF FEBRUARY 2024

LINNET NDOLO

JUDGE

Appearance:

Mr. Mwariri for the Claimant

Mr. Kihang'a for the Respondent

