



**Njataya v Sphinx Pharmaceuticals Ltd (Cause 2193 of 2016)  
[2023] KEELRC 211 (KLR) (31 January 2023) (Ruling)**

Neutral citation: [2023] KEELRC 211 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 2193 OF 2016  
J RIKA, J  
JANUARY 31, 2023**

**BETWEEN**

**BENJAMIN KAMANDA NJATAYA ..... CLAIMANT**

**AND**

**SPHINX PHARMACEUTICALS LTD ..... RESPONDENT**

**RULING**

1. This Claim was filed on October 27, 2016, and Judgment delivered on February 24, 2022.
2. Paragraph 8 of the Judgment states that, the respondent was twice served with the summons to enter appearance, but other than a Notice of appointment of Advocates, filed by Kamau Mwangi & Company Advocates, the respondent filed nothing else. Hearing proceeded ex parte, on October 14, 2021.
3. The respondent, now represented by Rom Law Advocates, applied through an application dated February 28, 2022, to set aside ex parte Judgment and the reopening of proceedings.
4. The application is based on an affidavit sworn by Human Resource Manager, Isabella Osoro on March 4, 2022 and a Further Affidavit sworn on September 21, 2022. She states that the Respondent did not receive the Summons to Enter Appearance, and that subsequently Court Processes were served on Sane & Company Advocates and Kamau Mwangi & Company Advocates, who did not have the Respondent's instructions.
5. The Application is opposed through an affidavit sworn by the claimant on August 24, 2022. It is explained that only a Notice of Mention, was inadvertently served upon Sane & Company Advocates. The rest of the Processes were served upon the Advocates engaged by the Respondent, Kamau Mwangi & Company Advocates. This Law Firm acknowledged all services, and stamped the Processes in acknowledgement. The claimant states that the respondent is free to pursue Kamau Mwangi & Company if the said Law Firm acted without instructions. The Respondent cannot be allowed to set



aside lawful proceedings and Judgment. It is also the position of the claimant that the Law Firm of Rom Law Advocates is not properly on record, as no leave was obtained to act for the Respondent, post-Judgment.

6. Parties agreed to have the Application considered and determined on the strength of their affidavits and submissions on record. The Application was last mentioned in court on November 22, 2022, when Parties confirmed filing of their Submissions.

**The Court Finds: -**

7. The record indicates that, Notice of Summons and Statement of Claim issued by the Deputy Registrar on November 8, 2019, were received by the respondent personally. The return shows that the Respondent received the Processes on December 4, 2019, at 10.06 a.m.
8. The respondent then instructed Kamau Mwangi & Company Advocates, who filed Notice of Appointment of Advocates, on December 17, 2019. The Notice is dated November 19, 2019.
9. The claimant's Advocates engaged the respondent's Advocates on pre-trials and served a Hearing Notice dated June 4, 2021, upon the Respondent's Advocates. The respondent's Advocates acknowledged service by stamping on the return. Receipt was on June 14, 2021.
10. The court is satisfied that Kamau Mwangi & Company Advocates, represented the respondent from the inception; there was no Statement of Response filed by the respondent; there was no attendance in court by the respondent at the hearing; and Judgment was obtained by the claimant legally.
11. If the respondent did not instruct Kamau Mwangi & Company Advocates, to represent it in the proceedings, that is not a ground for setting aside the Judgment; the Respondent ought to pursue the Advocates at another forum.
12. It is difficult in the eyes of any reasonable person, to see how an Advocate would just wake up in the morning and file a Notice of Appointment of Advocates, without instructions from a Party.
13. The spelling mistakes on the respondent's name- Sphinx or Sphinix- is not a significant default. The variation is probably influenced by the Parties' mother tongues, where words or names are not allowed to exist, without vowels. The documents presented by the claimant show the correct name is Sphinx. The Judgment, is in the correct name- Sphinx, and there can be no doubt that there is only one Respondent – Sphinx Pharmaceuticals Limited.
14. Mention Notice issued to Sane & Company Advocates was adequately explained by the claimant, to have issued in error. It had no significant effect on the eventual hearing, and the default by the respondent to file its Response, and participate in the hearing.
15. It is correct, that ROM LAW Advocates, through whom the Application is presented, are improperly on record. At the time Judgment was made, Kamau Mwangi & Company Advocates were on record for the Respondent. Leave ought to have been obtained by the new Advocates to come on record for the Respondent.

**It Is Ordered: -**

- a. The Application filed by the respondent dated February 28, 2022, seeking to set aside Judgment on record, and to reopen proceedings is declined.
- b. Costs to the claimant.



**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI,  
UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 31<sup>ST</sup>  
DAY OF JANUARY 2023.**

**JAMES RIKA**

**JUDGE**

