



Wijenje v Directline Assurance Company Limited & 6 others (Employment and Labour Relations Cause 165 of 2020) [2023] KEELRC 800 (KLR) (28 March 2023) (Ruling)

Neutral citation: [2023] KEELRC 800 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE 165 OF 2020**

**M MBARŪ, J
MARCH 28, 2023**

BETWEEN

TERRY WIJENJE CLAIMANT

AND

DIRECTLINE ASSURANCE COMPANY LIMITED 1ST RESPONDENT

ROYAL MEDIA SERVICES LIMITED 2ND RESPONDENT

ROYAL CREDIT LIMITED 3RD RESPONDENT

SAMUEL KAMAU MACHARIA 4TH RESPONDENT

PURITY GATHONI MACHARIA 5TH RESPONDENT

ISAAC NGARU 6TH RESPONDENT

DAVID NGUGI 7TH RESPONDENT

RULING

1. The respondents/applicants herein through the firm of Kamau Kuria & Company Advocates filed application dated 23rd November, 2022 under the provisions of Order 1 Rule 3, Order 2 Rule 15, Order 9 Rule 13 and Order 51 of the Civil Procedure Rules) and seeking for orders that;

1. _____ This Honourable Court be pleased to order that the purported Notice of Change of Advocates dated 23rd November, 2023, filed by the firm of Messrs. Gakoi Maina & Company Advocates purportedly on behalf of 1st Respondent be struck out and expunged from the record.
2. This Honourable Court do hold and declare that the firm of Messrs. Gakoi Maina & Company Advocates has not been appointed by the 1st Respondent to act for it in this suit.



3. this Honourable Court do hold and declare that purported Notice of Change of Advocates dated 23rd November, 2022, filed by the firm of Messrs. Gakoi Maina & Company Advocates purportedly on behalf of 1st Respondent is in contravention of the law and, therefore, null and void.
 4. The costs be paid by Messrs. Gakoi Maina & Company Advocates personally.
2. The application is supported by the Supporting Affidavit of Evans Nyangah the chief executive officer of the 1st respondent and on the grounds that;
- a. It is settled law that an advocate who has no authority from the client cannot file a notice of change of advocates and, if he does so, the same will be struck out and will be condemned to pay costs as the same happened in High Court at Nairobi Civil Case No 3791 of 1993: I.Z Engineering Construction Ltd –v- Trade Bank Ltd & 2 Others; the court held that an advocate, having not been authorized or appointed by the lawful directors or shareholders, could not have been lawfully authorized by those directors unlawfully appointed to act on behalf of the company; the court proceeded to strike out the application, memorandum of appearance and pleadings filed by the said advocates on behalf of the company and ordered Messrs. Kaplan Stratton Company Advocates to pay the costs personally;
 - b. The firm of Messrs. Gakoi Maina & Company Advocates has purportedly been appointed to act for the 1st Respondent in this matter on the basis of an illegal award made by Philip Alikier whose appointment as such has been challenged and nullification of the same sought by the 1st to 5th Respondents in Nairobi High Court Misc. App. No. E250 of 2021: Direct Line Assurance Ltd –v- Philip Alikier & Others which suit is pending hearing;
 - c. The said purported award is sought to be enforced in High Court Misc. Civil App. No. E509 of 2022: Sureinvest Company Ltd & Others vs. Royal Media Services Ltd & Others which is pending hearing before Hon. Justice Mwita; that suit has been filed by the shareholders and directors who derive their purported authority from the said illegal award;
 - d. Section 14(8) and 17(8) of the Arbitration Act forbid enforcement of an award pending determination of the competence of the arbitrator and the validity of the award; they provide as follows: -
 - 14(8) While an application under subsection (3) is pending before the High Court, the parties may commence, continue and conclude arbitral proceedings, but no award in such proceedings shall take effect until the application is decided, and such an award shall be void if the application is successful.
 - 17(8) While an application under subsection (6) is pending before the High Court the parties may commence, continue and conclude arbitral proceedings, but no award in such proceedings shall take effect until the application is decided and such award shall be void if the application is successful.
 - e. The purported Notice of Change of Advocates dated 23rd November, 2022, filed by the firm of Messrs. Gakoi Maina & Company Advocates purportedly on behalf of 1st Respondent is fraudulent; on 4th August, 2022, the said firm was informed, in writing, that it was not lawfully appointed by the purported majority shareholders as per the award of Philip Alliker whose validity is pending determination in the two suits referred to above and that further action on their part would constitute a contempt of court under both common law and Section 121 of the Penal Code which provides as follows:-



121. Offences relating to judicial proceedings

- 1) Any person who-
 - a. Within the premises in which any judicial proceeding is being had or taken, or within the precincts of the same, shows disrespect, in speech or manner, to or with reference to such proceedings, or any person whom such proceeding is being had or taken; or
 - b. Having been called upon to give evidence in a judicial proceeding, fails to attend, or having attended refuses to be sworn or to make an
 - c. Causes an obstruction or disturbance in the course of a judicial proceeding; or
 - d. While a judicial proceeding is pending, makes use of any speech or writing misrepresenting such proceeding or capable of prejudicing any person in favour of or against any parties to such proceeding, or calculated to lower the authority of any person before whom such proceeding is being had or taken; or
 - e. Publishes a report of the evidence taken in any judicial proceeding which has been directed to be held in private; or
 - f. Attempts wrongfully to interfere with or influence a witness in a judicial proceeding, either before or after he has given evidence, in connection with such evidence; or
 - g. Dismisses a servant because he has given evidence on behalf of a certain party to a judicial proceeding; or
 - h. Wrongfully retakes possession of land from any person who has recently obtained possession by a writ of court; or
 - i. Commits any other act of intentional disrespect to any judicial proceedings, or to any person before whom such proceedings is being had or taken, is guilty of an offence and is liable to imprisonment for tree years.
- 2) When any offence under any of paragraphs (a), (b), (c), (d) and (i) of subsection (1) is committed in view of the court, the court may cause the offender to be detained in custody, and at any time before the rising of the court on the same day may take cognizance of the offence and sentence the offender to a fine not exceeding one thousand four hundred shillings or in default of payment to imprisonment for a term not exceeding one month.
- 3) The provisions of this section shall be deemed to be in addition to and not in derogation from the power of the High Court to punish for contempt of court.

- f. By virtue of the rule in *Asia Pharmaceutical –v- Nairobi Veterinary Centre Limited* HCC 291 of 2000, it is only the majority shareholders or directors of a company who can sue in the name of the company like the 1st Respondent; under the 2009 amendment to the *Insurance Act*, the holders of 60% of the allotted shares are Royal Media Services Ltd, Royal Credit Ltd, Dr. S. K.



Macharia and Mrs. P. G. Macharia and they have not appointed the said firm of Messrs. Gakoi Maina & Company Advocates.

3. In the Supporting Affidavit, Mr. Nyagah avers that as the Principal Officer and the Chief Executive Officer of the 1st Respondent he has authority of the 1st to 5th Respondents to support the instant application taking into account that the 6th and 7th Respondents are former Chief Executives of the 1st Respondent, who left the Company.
4. The purported Notice of Change of Advocates dated 23rd November, 2022, filed by the firm of Messrs. Gakoi Maina & Company Advocates purportedly on behalf of 1st Respondent is fraudulent as the 1st Respondent has not appointed it as its advocate. The history of the said firm of Messrs. Gakoi Maina & Company
5. Advocates dates back to 14th July, 2022, when the Claimant herein purported to act in the name of the 1st Respondent and appoint the firm as advocates of the 1st Respondent through letter dated 4th August, 2022, which she generated on her authority to revoke the Company's advocates and appoint her own for the Company. For her actions, the claimant relied on a purported order issued by one, Philip Alliker on 1st July, 2022 whose appointment as an arbitrator was questioned by the majority shareholders on 9th April, 2021, in High Court Misc. App. No. E250 of 2021: Directline Assurance Ltd & Others –v- Philip Alliker & Others and which matter is pending before the Commercial Division of the High Court. the said Philip Alliker continued with his arbitration and completed it before the suit was heard and determined.
6. On 27th June, 2022, the company filed High Court Misc. App. No. E250 of 2021: Directline Assurance Ltd & Others –v- Philip Alliker & Others an application in which it is seeking a nullification of the said award; the said application is pending.
7. On 6th July, 2022, Janus Ltd, a company in which the Claimant is the majority shareholder, jointly with others applied for enforcement of the said award in High Court Misc. Appl. No. E509 of 2022 and the said application is pending determination.
8. On 17th August, 2022, the said Janus Ltd applied for the hearing of some of the prayers in the said suit High Court Misc. Appl. No. E509 of 2022.
9. Mr. Nyagah also avers that the purported shareholding on which the appointment is founded is fraudulent and is the subject matter in High Court Criminal Revision App. No. E115 of 2022: Directline Assurance Company Ltd –v- Inspector General of Police & Others. The said Criminal Revision application is also pending hearing by the Criminal Division of the High Court and is coming up for mention on 28th November, 2022 and the Claimant, who is an intended accused, is aware that both Janus Ltd and the Claimant are some of the intended accused in a private prosecution application pending in the Chief Magistrate's Court.
10. In High Court Misc. App. No. E250 of 2021, the 1st Respondent has applied that the 3 suits be referred to a bench of 3 Judges for determination through applications dated 5th July, 2021, and 28th September, 2022, respectively. The issues of the lawful directors and shareholders is pending determination in the said 3 pending suits.
11. In reply, Lisa Anyango Amenity filed a Replying Affidavit as a director of the 1st respondent, Directline Assurance Company Limited and avers that the Authority to respond herein is drawn from returns based on Form CR 12 of the Company showing who the current directors of the Company are. Ms. Amenity avers that she is also a Director of AKM Investments Limited which is a shareholder in the said Company. The Notice of Motion Application dated 23rd November 2022 together with the



Supporting Affidavit of Evans Nyagah filed therewith by the law firm of Kamau Kuria & Company Advocates opposing and challenging the Notice of Change of Advocates dated 23rd November 2022 filed by the law firm of Gakoi Maina & Company Advocates is bad in law and should be dismissed on the grounds that even though the "The Applicant" is said to be the 1st to 7th Respondents, the 2nd to 7th Respondents have no locus standi to bring such an Application as it is not their business to decide who represents the 1st Respondent in the proceedings and as such the names of the 2nd to 7th Respondents should be struck out as Applicants in the said Application. if on the other hand it be, that the Applicant is Directline Assurance Company Limited, the Application would be incurably defective firstly, for having been brought without the requisite authority of the Company and/ or its Board of Directors and for breaching the rule in *Foss vs Harbottle* (1843) 2 Hare 461.

12. The Board of Directors representing the Majority Shareholders with 90.336% shareholding has not authorized the filing of the said Application or Evans Nyagah who purports to be the Principal Officer and CEO of the 1st Defendant/ Respondent to support the application as required by Order 4 Rule 1(4) of the Civil Procedure Rules 2010. the Board of Directors representing the Majority Shareholders with 90.336% shareholding did on 10th November 2022 pass a resolution to appoint the firm of Gakoi Maina & Company Advocates to take over the conduct of the 1st Respondent's Defence from Kamau Kuria & Company Advocates as per the Resolution and hence, if the applicant is Kamau Kuria & Company Advocates, they are incompetent to bring such an Application given that they are not parties in the suit.
13. Upon service of the Court Summons on the respondents, including the 1st Respondent, it appointed the law firm of Kamau Kuria & Company Advocates to act for them in this matter. several matters, including but not limited to the filing of the Claim herein by Ms. Terry Wijenje the former CEO and Principal officer and the said appointment of the law firm of Kamau Kuria & Company Advocates to act for the 1st Respondent Company, arose against the background of an illegal purported take-over of the ownership, operations and management of the 1st Respondent Company by the 2nd to 7th Respondents sometime in June/July 2018 after the sudden and untimely death of John Gichia Macharia who was the founder behind the incorporation, business and operations of Directline Assurance Company Limited and also the son of the 4th Respondent. The illegalities and irregularities in the purported take-over operations and management of the 1st Respondent Company perpetrated by the 2nd to 7th Respondents and specifically at the behest of the 4th Respondent culminated in *the constitution* of an unprocedurally and irregularly appointed Board of Directors which ultimately purported to appoint the said law firm of Kamau Kuria & Company Advocates to act for the 1st Respondent in this and several other court cases.
14. As a result, to the foregoing a Shareholders Dispute arose between the Minority Shareholders comprising of the 2nd to 7th Respondents on the one hand and the Majority Shareholders comprising of AKM Investments Limited, Janus Limited, Sureinvest Company Limited, Stenny Investments Pty Limited and Triad Networks Limited on the other hand.
15. The said Shareholders Dispute culminated in Nairobi HCCC 277 of 2019 which dispute was referred to Arbitration and an Award was rendered by Arbitrator Philip Bliss Alier dated 22nd May 2022 in which he made observations, held and gave orders inter alia as follows:
 - a. The Minority Shareholders, led by Dr. S.K. Macharia, illegally and forcibly took over the physical and practical management of the Company.
 - b. The Majority Shareholders comprising of AKM Investments Limited, Janus Limited, Sureinvest Company Limited, Stenny Investments Pty Limited and Triad Networks Limited



hold 90.336% shareholding while the Minority Shareholders comprising of Royal Media Services Limited, Royal Credit Limited, Samuel Kamau Macharia, Purity Gathoni Macharia, Isaac Ngaru and David Ngugi hold 9.66% shareholding.

16. The Arbitrator's award included specific findings and Orders that;
252. It follows, in my judgment that Dr. Macharia has unlawfully interfered with the management of the Company and must be restrained whether by himself or by causing or permitting others to interfere with the Claimants' lawful management of the Company.
254. The Claimants are entitled to compel the Respondents to give them immediate control of the Company and I am content that it is appropriate for me to make Orders relevant to my finding that the Claimants are Majority Shareholders.
- 256 (3).A declaration that Dr. Macharia, his servants and agents unlawfully entered the business premises of Directline Assurance Company Limited situate and known as Hazina Towers, 17th Floor, Monrovia Street, Nairobi, Kenya on 3rd September 2019 and continue to unlawfully occupy the said premises.
- 256 (4).A declaration that the Respondents, exclusion of the Claimants, their servants and agents from business premises of Direcline Assurance Company Limited situate and known as Hazina Towers, 17th Floor, Monrovia Street, Nairobi, Kenya is unlawful and a trespass. The exclusion violated the rights of the Claimants as shareholders in majority.
- 256 (5).An order requiring the Respondents their servants or agents within 24 hours of this Award to deliver up possession of Hazina Towers, 17th Floor, Monrovia Street, Nairobi, Kenya.
- 256 (6) An order requiring the Respondents within 24 hours of this order to deliver up or cause to be delivered up all books, documents and other property of Directline Assurance Company Limited in their custody, power or control.
- 256 (8).A permanent injunction restraining the Respondents, their servants or agents from causing or permitting any interference with the attendance and management of Directline Assurance Company Limited by the Company, the Claimants, their servants or agents.
17. The Arbitral Award is the subject of two pending Applications filed in the High Court by the Majority Shareholders seeking the recognition, adoption and enforcement of the Award. The Minority Shareholders comprising of the 2nd to 7th Respondents have also purported to bring in the 1st Respondent seeking nullification of the Award. No Orders of "Stay" or "Setting Aside" of the said Arbitral Award have been issued and under Section 32A of the *Arbitration Act* provides that an Arbitral Award is final and binding on the parties unless stayed or set aside by the Court which has not happened in this case.
18. The Registrar of Companies through letter Ref. No. BRS/CR/GC/6 VOL.1/132 while giving a response on a complaint about the illegal purported take-over of the Company by the Minority Shareholders being the 2nd to 7th Respondents held that: "All the changes at the Companies Registry initiated by the Minority Shareholders were null and void as they had no backing in law". The illegalities and irregularities in *the constitution* of the impugned Board of Directors that purported to appoint the firm of Kamau Kuria & Company Advocates as well as the Affidavit by Evans Nyagah without the authority of the majority shareholders and the board has also been held to have been invalid in HCCC 247 of 2022 wherein the court struck off the entire suit for being an abuse of the court process having been filed without the authority and sanction of the Majority Shareholders and Evans Nyagah the deponent of the Affidavit in support of the instant Application is acting in utter contempt



of the dignity of the court by swearing the said Affidavit notwithstanding the chastisement meted out on him in the aforementioned Judgment.

19. Besides duly appointing the law firm of Gakoi Maina & Company Advocates to take over the 1st Respondent's Defence from Kamau Kuria & Company Advocates the Board also wrote a letter dated 23rd November 2022 to the latter law firm instructing them to cease acting for the Company and in view of the foregoing, it is clear that the firm of Gakoi Maina & Company Advocates was validly appointed to take over from Kamau Kuria & Company Advocates, the conduct of the 1st Respondent's Defence in this case. An Advocate cannot purport to oppose a decision of a party or client to terminate for whatever reason, its services at any time. The 1st Respondent through its validly constituted Board has a constitutional right to be represented by an Advocate of its choice which in this case is the said law firm of Gakoi Maina & Company Advocates in any event the "unidentified/undisclosed/unknown" Applicant herein has not demonstrated what prejudice will be suffered in the event that the Application herein is not allowed and, having come properly on record, the law firm of Gakoi Maina & Company Advocates should be allowed to take over proceedings herein and therefore the instant application should be dismissed with costs.
20. In reply, the claimant Terry Wijenje alias Terry Janice Wanjiku Kiarie Wijenje filed her Replying Affidavit and avers that besides being the Claimant in the Amended Statement of Claim herein she is also a Director of Directline Assurance Company Limited as evidenced by Form CR 12 of the Company showing the current directors of the Company. The claimant is also a Director of Janus Limited which is a shareholder in the said Company per Form CR 12 of Janus Limited.
21. The instant application seeking to have the firm of Kamau Kuria & Company Advocates being the "The Applicant" is defective and the Supporting Affidavit in the said Application remains "unidentified/undisclosed/unknown" by the 1st respondent and if it be, that the Applicant is Kamau Kuria & Company Advocates, they are incompetent to bring such an Application given that they are not parties in the suit. On the other hand, if the Applicant is Directline Assurance Company Limited, the Application would be incurably defective for having been brought without the requisite authority of the Company and/or its Board of Directors and for breaching the rule of Foss vs. Harbottle (1843) 2 Hare 461. The Board of Directors representing the Majority Shareholders with 90.336% shareholding has not authorized the filing of the said Application or Evans Nyaga who purports to be the Principal Officer and CEO of the 1st Respondent to swear the said Supporting Affidavit as required by Order 4 Rule 1(4) of the Civil Procedure Rules, 2010. On the other hand, the Board of Directors representing the Majority Shareholders with 90.336% shareholding did on 10th November, 2022 duly pass a resolution to appoint the said law firm of Gakoi Maina & Company Advocates to take over the conduct of the 1st Respondent's Defence from Kamau Kuria & Company Advocates.
22. The claimant also avers that when she filed the claim herein she served the respondents and who appointed the law firm of Kamau Kuria & Company Advocates to act for them in this matter. Following several changes in the 1st respondent in shareholding, a dispute arose and culminated in Nairobi HCCC 277 of 2019 in which the dispute was referred to Arbitration and an Award was rendered by Arbitrator Philip Bliss Alier dated 22nd May, 2022 in which the Arbitrator held inter alia that:
 - a. The Minority Shareholders, led by Dr. S. K. Macharia, illegally and forcibly took over the physical and practical management of the Company.
 - b. The Majority Shareholders comprising of AKM Investments Limited, Janus Limited, Sureinvest Company Limited Stenny Investments Pty Limited and Triad Networks Limited hold 90.336% shareholding while the Minority Shareholders comprising of Royal Media



Services Limited, Royal Credit Limited, Samuel Kamau Macharia, Purity Gathoni Macharia, Isaac Ngaru and David Ngugi hold 9.66% shareholding.

23. The Arbitral Award is the subject of two pending Applications filed in the High Court save there is no stay of an order to set aside the arbitral award. the Registrar of Companies via a letter Ref. No. BRS/CR/GC/6.1/132 while giving a response on a complaint about the illegal purported take-over of the Company by the Minority Shareholders i.e. the 2nd to 7th Respondents held that: “All the changes at the Companies Registry initiated by the Minority Shareholders were null and void as they had no backing in law”.
24. The purported appointment of the firm of Kamau Kuria & Company Advocates has also been found to have been invalid in HCCC 247 of 2022 wherein the Court struck off the entire suit for being an abuse of the Court process for having been filed without the authority and sanction of the Majority Shareholders. Evans Nyaga the deponent of the Affidavit in support of the instant Application is acting in utter contempt of the dignity of the Court by swearing the said Affidavit notwithstanding the chastisement meted out on him in the aforementioned Judgment.
25. The claimant’s counsel Ms. Mugenyu submitted that the claimant has since filed Notice to withdraw this suit and through a consent filed on 24th November, 2022 the claimant and the 1st respondent addressed the counterclaim and marked the suit as settled and such consent should be adopted as the order of the court.
26. Parties then proceeded to make detailed written submissions and attended court for extensive oral highlights.
27. At the heart of the instant application is the legal representation of the 1st respondent, Directline Assurance Company Limited in these proceedings.
28. Upon service of summons herein, the respondents appointed the firm of Kamau Kuria & Company Advocates to represent them. Through Notice dated 23rd November, 2022 the firm of Gakoi Maina & Company Advocates filed Notice of Change of Advocates to act for the 1st respondent Company.
29. Who then should represent the 1st respondent in these proceedings?
30. Section 22 of the *[Employment and Labour Relations Court Act](#)*, 2011 provides that;
 22. Representation before the Court
In any proceedings before the Court or a subordinate Employment and Labour Relations Court, a party to the proceedings may act in person or be represented by an advocate, an office bearer or official of the party’s trade union or employers’ organisation and, if the party is a juristic person, by a director or an employee specially authorised for that purpose
31. A party served to attended before this Court has the right of choice with regard to the legal representation.
32. In this case, the 1st respondent has two regulatory frameworks to it. It is both a limited liability company registered under the *[Companies Act](#)* as well running insurance business and the regulator is the Insurance Regulatory Authority under the provisions of the *[Insurance Act](#)*.
33. The claimant filed suit herein following an employment dispute. The claimant has since withdrawn her claim.



34. For the 1st respondent to stand as a company so as to run insurance business, the company has its shareholders and directors. Pursuant to the last returns from the Registrar of Companies, as at 21st November, 2022 the directorship of the 1st respondent is comprised of; and
- a. AKM Investment Limited, Janus Limited, Sureinvest Company Limited, Stenny Investment Pty Limited and Triad Networks Limited who hold 90.336% shareholding; and
 - b. Royal Media Services Limited, Royal Credit Limited, Samuel Kamau Macharia, Purity Gathoni Macharia, Isaac Ngaru and David Ngugi holding 9.66% shareholding.
35. These returns have been challenged at the High Court following an arbitral Award by Philip Alier and whose appointment as an arbitrator is challenged in Nairobi High Court Misc. Application No. E250 of 2021 – Directline Assurance Limited v Philip Alier & others and the award enforcement is challenged in Nairobi High Court Misc. Application No. E509 of 2022 Sureinvest Company Limited & 4 others v Royal Media Services Limited & Others.
36. Pending the matters at the High Court to determine whether the arbitrator was properly appointed and whether the arbitral award granted should stand as issued, there are no interim orders staying the Arbitral Award and or the appointment of the Arbitrator.
37. The last and most current records at the Company Registry with regard to shareholding of the 1st respondent is that there is a majority holding 90.336% held by AKM Investment Limited, Janus Limited, Sureinvest Company Limited while there is a minority shareholding at 9.66% held by Royal Media Services Limited, Royal Credit Limited, Samuel Kamau Macharia, Purity Gathoni Macharia, Isaac Ngaru and David Ngugi.
38. The shareholding dispute apparent, these being matters already before a competent court, High Court for determination, it would not be prudent for this court to address, save with the current returns from the Companies Registrar with a majority shareholding who have since appointed Kagoi & Company Advocates to act for the company, 1st respondent and filed a Notice of Change of Advocates herein, this being the employer sued by the claimant together with its directors comprising the 2nd to 7th respondents, As correctly submitted by the firm of Kamau Kuria & Company Advocates in the case of Asia Pharmaceutical v Nairobi Veterinary Center Limited HCC 291 of 2000 it is the majority shareholders who have the power to appoint advocates. Though this shareholding is challenged, the current status of the 1st respondent is based on the Registrar of Companies returns
39. which the court relies upon in the circumstances of this case this being the government office mandated to keep such records.
40. As much as the parties are addressing the Arbitral Award made by Philip Alier pursuant to Section 14(8) and 17(8) of the Arbitration Act in High Court Misc. Civil Application E250 of 2021 Directline Assurance Limited v Philip Alier following his award that is also challenged in High Court Misc. application E509 of 2022 Sureinvest Company Limited & 4 Others v Royal Media Services Limited & 3 others, the majority shareholders of the 1st respondent have not been stayed or set aside and for this purpose, the 1st respondent has appointed advocates to represent its interests in this proceedings through the Notice of Change of Advocates dated 23rd November, 2022.
41. On this basis, in November, 2022 the claimant herein Terry Winjenje through her advocates filed Notice to Withdraw her claim herein. Being the right-holder of matters leading to the initiation of the instant suit, such Notice cannot be stopped. The same is hereby confirmed as the true position of this claim, which is hereby withdrawn.



- 42. Upon coming on record and appointing the firm of Gakoi Maina & Company Advocates, through Notice dated 22nd November, 2022 and filed on 24th November, 2022 the claimant and the 1st respondent filed a Consent settling the suit with the 1st respondent's counterclaim marked as withdrawn and no orders to costs.
- 43. Essentially, parties through the Consent filed on 24th November, 2022 settled the instant suit.
- 44. Before conclusion, it is apparent that the shareholders of the 1st respondent have various matters ongoing before the High Court and touching on the nature and holding of various shares therein relating to the running of the 1st respondent company save such matters now removed from this court, with the claimant having withdrawn her claim herein and the 1st respondent having entered a consent to settle this matter, parties are still secured where their company rights in 1st respondent shall still be determined outside of these proceedings.
- 45. Accordingly, application dated 23rd November, 2022 is found without merit, the firm of Gakoi Maina & Company Advocates Notice of Change of Advocates is hereby found proper; the claimant and the 1st respondent Consent filed on 24th November, 2022 is hereby adopted as the final order of the court the suit herein marked as settled.
- 46. On the settled suit, each party shall bear own costs.

DELIVERED IN OPEN COURT AT MOMBASA THIS 28TH DAY OF MARCH, 2023.

In the presence of:

Court Assistant: Japhet Muthaine

M. MBARŪ JUDGE

..... and

