



**NIC Bank Limited v Kioi t/a Kakamega Elite Senior School (Commercial Case E036 of 2023)
[2025] KEHC 1129 (KLR) (Commercial and Tax) (27 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1129 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E036 OF 2023
PM MULWA, J
FEBRUARY 27, 2025**

BETWEEN

NIC BANK LIMITED APPELLANT

AND

JOSEPH KIOI T/A KAKAMEGA ELITE SENIOR SCHOOL RESPONDENT

RULING

1. Before the court is the respondent's Notice of Motion application dated 16th January 2024 filed inter alia pursuant to Order 1 rule 1, Order 2 rule 15(1)(b) & (d) of the Civil Procedure Rules, Section 4(b) of the [Business Registration Service Act](#) and Section 3 of the [Banking Act](#).
2. The respondent prayed for an order to strike out the instant appeal and for all the consequential orders to be set aside.
3. The basis of the application is that the appellant is neither a natural nor a juristic person therefore it has no legal capacity to institute the appeal.
4. The respondent argued that the present appeal is nullity ab initio and further that the decree arising from the judgment appealed against has already been satisfied in full and therefore this appeal is an abuse of the court process.
5. The respondent opposed the application vide a replying affidavit sworn on 26th January 2024 by its senior legal counsel, who averred that the instant appeal was properly instituted by the appellant NCBA Bank Kenya PLC on 27th February 2023 and that the appellant's advocates erroneously made an error when filing its pleadings resulting in the appellant being referred to as 'NIC Bank Limited'.



Analysis and determination.

6. The parties respectively filed written submissions, for the respondent/applicant dated 8th February 2024 and for the appellant dated 8th April 2024, which the court has considered alongside the pleadings. The issue for determination is whether the appeal herein ought to be struck out.
7. The respondent submitted that the instant appeal ought to be struck out on the basis that it was instituted in the name of NIC Bank limited which entity does not exist therefore this court cannot hear the appeal as there is no person before it that is seeking to be heard.
8. That a search conducted in the Business Registration Service (BRS) had revealed that there was no entity known as NIC Bank Limited registered in Kenya, which is conclusive proof of its non-existence.
9. On its part the appellant submitted that the respondent's contention that the appellant is not a juristic person is unfounded as the respondent has demonstrated the transfer of business from the appellant to NCBA Bank Kenya PLC. Further that the appellant has a right to appeal and has demonstrated its grounds of appeal which ought to be determined on its merits.
10. It is public knowledge, as evidenced in the documents attached in this application, that the appellant transitioned to NIC Bank Kenya PLC and eventually NCBA Bank Kenya PLC. This is therefore an issue of misjoinder of a party.
11. Order 1 Rule 9 of the Civil Procedure Rules states:

“No suit shall be defeated by reason of the misjoinder or non-joinder of parties, and the court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.”
12. In the case of William Kiprono Towett & 1597 others v Farmland Aviation Ltd & 2 others 2016 eKLR, the Court of Appeal held:

“Most critically Order 1 Rule 9 of the Civil Procedure Rules [2010] makes it abundantly clear that misjoinder or non-joinder of parties cannot be a ground to defeat a suit.”
13. In appreciation the finding of the court in the above cited case, I find that striking out the appeal herein on account of a misjoinder of a party would be a draconian measure that would surely deprive a party the right to a fair trial on the basis of a technicality. The Civil Procedure Rules permit the amendment of pleadings any time before judgement is entered and in this case it is a fair remedy to pursue.
14. The appellant has a right to ventilate its appeal against the judgment of the lower court as demonstrated in its memorandum of appeal.
15. I therefore dismiss the instant application with costs awarded to the respondent.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI

THIS 27TH DAY OF FEBRUARY 2025.

PETER M. MULWA

JUDGE

In the presence of:

Ms. Mburu for Appellant



Ms. Wambui for Respondent/applicant

Court Assistant: Carlos

