



Ventura Aviation Limited v Skylink Express Limited & another (Commercial Suit E477 of 2022) [2025] KEHC 12280 (KLR) (Commercial and Tax) (29 August 2025) (Ruling)

Neutral citation: [2025] KEHC 12280 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL SUIT E477 OF 2022
H NAMISI, J
AUGUST 29, 2025**

BETWEEN

VENTURA AVIATION LIMITED PLAINTIFF

AND

SKYLINK EXPRESS LIMITED 1ST DEFENDANT

JOHN ALAN OKEMWA ANUNDA 2ND DEFENDANT

RULING

1. Before the Court is Notice of Motion dated 14 August 2024 seeking the following orders:
 - i. Spent
 - ii. That this Honourable Court be pleased to issue a stay of execution of the judgement issued on 30 July 2024, the ensuing decree and all consequential orders thereto pending the hearing and determination of this Application;
 - iii. That this Honourable Court be pleased to grant an order of stay of execution of the judgement issued on 30 July 2024, the ensuing decree and all consequential orders thereto pending the hearing and determination of the intended appeal against the judgement delivered by the Hon. Justice J.W.W Mong'are on 30 July 2024;
 - iv. That the Honourable Court be pleased to make any such further orders and issue any other relief it may deem just to grant in the interest of justice;
 - v. That costs of this Application be provided for.



Brief Background

2. The suit instituted by the Plaintiff/Applicant seeks to recover USD 300,540 for an alleged breach of contract. In response to the suit, the Respondents raised a Preliminary Objection dated 19 January 2023, challenging the Court's jurisdiction to hear and determine the matter. The Preliminary Objection was heard and ruling delivered on 26 June 2023, upholding the Objection. The Court further ordered stay of suit and its attendant applications and directed parties to resolve the dispute through arbitration in the first instance, in accordance with Clause 16 of their Lease Agreement. Costs of the Application were awarded to the Respondents.
3. Following the Ruling, the Respondents filed a Bill of Costs dated 5 October 2023. The Applicant contends that this Bill of Costs improperly claimed costs arising from the main claim, rather than being confined solely to the costs of the Preliminary Objection as awarded by the Court. On 23 February 2024, the Taxing Master delivered a Ruling on the Bill of Costs, taxing it at Kshs 968,865/=. The Applicant maintains that this amount was exorbitant, asserting that the instruction fees were erroneously assessed based on the subject matter of the main claim, rather than the Preliminary Objection itself.
4. Dissatisfied with the Taxation Ruling, the Applicant filed Chamber Summons dated 11 July 2024, seeking enlargement of time to file a Reference against the Ruling. However, the Respondents had filed an earlier application dated 12 April 2024, seeking to enter judgement on the Certificate of Taxation. The Respondents' application proceeded unopposed and on 30 July 2024, and a decision thereon was rendered on 30 July 2024.
5. The decision of 30 July 2024 prompted the Applicant to file a Notice of Appeal dated 5 August 2024. In the interim, the Respondents extracted the decree dated 30 July 2024 and instructed auctioneers, who obtained warrants of attachment and sale and issued Proclamation Notice dated 13 August 2024. This precipitated the current application dated 14 August 2024.

Preliminary Objection

6. The Defendants/Respondents have opposed the Application. Concurrently with their Replying Affidavit, the Respondents raised a Preliminary Objection dated 28 August 2024, challenging the competence and legal basis of the Application.
7. Given the nature of the Preliminary Objection, which questions the very foundation upon which the Application rests, it is imperative that this Court first addresses the points raised.
8. The Respondents contend that the present Application is incompetent as it was filed by a new firm of Advocates, RONN Law Advocates LLP, without first obtaining leave of the Court or consent of the previous Advocates, which is in violation of Order 9 Rule 9(a) and (b) and Rule 10 of the Civil Procedure Rules. Order 9 Rule 9 provides that:

When there is a change of advocate, or when a party decides to act in person having previously engaged an advocate, after judgement 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 the 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.”
9. The Respondents rely on the case of *Kathiaka -vs- Muraguri* [2022] KEHC 506 KLR.



10. The Applicant counters this objection by arguing that the provision applies only to a change of advocate post-judgement in the main suit, and in the present case, no judgement has been delivered on the substantive issues in dispute, as the suit was stayed pending arbitration. The Applicant asserts that the Court only issued a ruling on the Preliminary Objection, and, therefore, the requirement for leave or consent for a change of advocates is not applicable.
11. In *Monica Moraa vs. Kenindia Assurance Co. Ltd* [2012] eKLR, Sitati, J delved into the provisions of Order 9 rule 9 and expressed herself as follows:

“there is no doubt in my mind that the issue of representation is critical especially in cases such as this one where the applicant’s advocates intend to come on record after delivery of judgment. There are specific provisions governing such change of advocate. In my view the firm of M/s Kibichiy & Co. Advocates should have sought this court’s leave to come on record as acting for the applicant...The firm of M/s Kibichiy & Co. Advocates has not complied with the rules and instead, have just gone ahead and filed a Notice of Appointment without following the laid down procedure. The issue of representation is a vital component of the civil practice and the courts cannot turn a blind eye to situations where the rules are flagrantly breached...The mischief order 9 of the Civil Procedure Rules intended to address was to protect advocates or firms of advocates being replaced without Notice and without their legal fees being settled. In as much as M/s Kibichiy & Co. Advocates were holding brief for M/s Hamilton Harrison & Mathews Advocates it was important that they come on record properly and should have filed a consent and/or made an application seeking leave as provided for under Order 9 Rule 10 of the Civil Procedure Rules.”
12. The critical point of contention revolves around the interpretation of judgement within the context of Order 9 Rule 9. While the main suit was, indeed, stayed for arbitration, a “judgement” was subsequently entered by Hon. Justice Mong’are on 30 July 2024 for the taxed sum. The question is whether the decision constitutes a judgement as contemplated in Order 9 Rule 9.
13. The purpose of this provision is to ensure procedural orderliness and to prevent confusion or prejudice to parties once a matter has reached a conclusive stage, such as the entry of judgement. Although the Rule does not distinguish between a judgement on merits of a suit and a judgement on costs, it is clear from the Ruling of 26 June 2023 that the main suit had been stayed and the judgement herein was in respect of the costs awarded for the Preliminary Objection. In my view, the decision of 30 July 2024 was not a conclusive determination of the suit but a determination of the costs relating to one aspect of the suit, the Ruling of 26 June 2023.
14. Based on the foregoing, I, therefore, concur with the Applicant’s submissions that Court only issued a ruling on the Preliminary Objection dated 19 January 2023 and not the main suit. Therefore, the requirement for the firm of RONN Law Advocates LLP to seek leave of the Court or consent of the previous advocates is not applicable in the circumstances. The Preliminary Objection herein dated 28 August 2024 is overruled.
15. That notwithstanding, whilst keenly reviewing the Application, Affidavits and submissions herein, I took the liberty of reviewing the status of representation on the CTS platform and the court file.
16. The first time that the current Advocates for the Applicant appear in this matter is vide letter dated 2 May 2024 to the Deputy Registrar, requesting copies of the Ruling dated 26 June 2023. This is followed by an Application dated 11 July 2024, seeking to enlarge time to allow the Applicant file a Reference against the taxation ruling dated 23 February 2024. I have carefully perused the court file as well as the CTS Platform. Pursuant to Order 9, Rule 5 of the Civil Procedure Rules, the Applicant



having been previously represented by a law firm, a Notice of Change ought to have been filed. The same does not appear in the court records. Order 9 Rule 5 provides as follows:

A party suing or defending by an advocate shall be at liberty to change his advocate in any cause or matter, without an order for that purpose, but unless and until notice of any change of advocate is filed in the court in which such cause or matter is proceeding and served in accordance with rule 6, the former advocate shall, subject to rules 12 and 13 be considered the advocate of the party until the final conclusion of the cause or matter, including any review or appeal. (emphasis added)

17. The Court is not entitled to simply ignore a procedural misstep. The rules of procedure are meant to regulate administration of justice. The entry of RONN Law Advocates LLP in this matter is, therefore, procedurally irregular. They are not properly on record.
18. Accordingly, the Application dated 14 August 2024 is incompetent and is struck out with costs to the Respondent.

DATED AND DELIVERED AT NAIROBI THIS 29 DAY OF AUGUST, 2025

HELENE R. NAMISI

JUDGE OF THE HIGH COURT

Delivered on virtual platform in the presence of:

Applicant: Mr. Kipngetich h/b Mwangi

Respondents: Mr. Mbugua

Court Assistant: Lucy Mwangi

