



REPUBLIC OF KENYA



KENYA LAW
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**Accredo AG v Salama Beach Hotel Limited & 5 others (Civil Case
118 of 2009) [2024] KEHC 7737 (KLR) (21 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7737 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
CIVIL CASE 118 OF 2009
M THANDE, J
JUNE 21, 2024**

BETWEEN

ACCREDO AG PLAINTIFF

AND

SALAMA BEACH HOTEL LIMITED 1ST DEFENDANT

HANS JUERGEN LANGER 2ND DEFENDANT

ZAHRA LANGER 3RD DEFENDANT

STEFANO UCCELI 4TH DEFENDANT

ISAAC RODROT 5TH DEFENDANT

VENTAGLIO INTERNATIONAL SA (IN RECEIVERSHIP) 6TH DEFENDANT

RULING

1. Before Court for determination is an Application dated 22.11.22 in which the Ventaglio International SA (in receivership) (Ventaglio), Intended 6th Defendant seeks the following orders:
 1. Spent.
 2. Spent.
 3. Spent
 4. Leave be granted for the Intended 6th Defendant to be enjoined (*sic*) in this suit as the 6th Defendant.
 5. Leave be granted to the Intended 6th Defendant to continue this suit as a derivative suit.



6. This Court be pleased to give an interpretation and settlement of the terms of Order Nos. 2 and 3 granted by the Learned Judge Said J. Chitembwe in this matter vide the Ruling delivered on 30th April 2015 on whether the 5th Defendant/Respondent is the sole shareholder and director of the 1st Defendant/Respondent.
 7. This Court be pleased to grant an order pursuant to section 103 of the *Companies Act* for the rectification of the 1st Defendant/Respondent's register of members to include the Intended 6th Defendant/Applicant and Abacus Services Limited as shareholder of the 1st Defendant/Respondent holding 81,000 and 9,000 shares respectively.
2. In the ruling in question, the Court directed the Registrar of companies to remove of Hans Jurgen Langer (Hans) and Zahra Langer (Zahra) the 2nd and 3rd Defendants respectively, as directors of Salama Beach Hotel Limited (Salama) and restore in its registry the status of Salama as at 14.12.09. The Court further directed Hans and Zahra to hand over all the properties of Salama to Stefano Uccelli (Uccelli) the 4th Respondent and Isaac Rodrot (Rodrot) the 5th Respondent within 7 days.
 3. It is Ventaglio's case that it was as at 14.12.09 together with Abacus Services Limited the sole shareholders of Salama, holding respectively, 81,000 and 9,000 shares therein. As such, Ventaglio is a necessary party for the effectual and conclusive determination of the issues in this matter. Ventaglio asserts that following the ruling, the Rodrot has decreed himself the sole shareholder of Salama, while Mario Scotti Camuzzi (Camuzzi) and Uccelli are its directors. Rodrot has engineered changes to Salama excluding the rightful owners and thereby unlawfully and illegally divesting Ventaglio of its shares in Salama, in breach of Article 40 of the *Constitution*. Further, that Rodrot has filed HCCC No. 10 of 2020 challenging the proprietary rights of Ventaglio of shares in Salama and further asserting his, Uccelli's and Camuzzi's right as the sold shareholders of Salama.
 4. It is Ventaglio's contention that unless the orders sought are granted, it stands to be severely prejudiced as it will be unlawfully divested of its proprietary rights in the shares in Salama without any just compensation. Additionally, that Accredo has been in possession of Salama since 2009 without giving a true and just account to the detriment of Ventaglio and its shareholders. Ventaglio further claimed that Salama does not have any body of management to have meetings and pass resolutions through which the acts complained of can be rectified. Ventaglio urged that it is the interests of justice that the orders sought are granted.
 5. Rodrot opposed the Application vide a preliminary objection (PO) and replying affidavit both dated 5.12.22. The grounds in the PO are that:
 - i. Further proceedings cannot be taken before full implementation of the orders in question.
 - ii. the issues raised in the Application are subjudice HCCC No. 10 of 2020.
 - iii. The Applicant being an entity in receivership has no capacity to take out judicial proceedings on its own.
 - iv. That the deponent D ssa Dai Morro Magdalena has no locus standi to move the court on capacity allegedly conferred upon him by an Italian Court, the orders of which have not been registered in this country.
 - v. That the Application is fatally defective for offending Section 560 of the *Insolvency Act* and Paras 8, 13 and 19 of the Fifth Schedule.
 - vi. That the Applicant cannot approbate and reprobate. That the orders of 30.4.15 have remained in force and are being implemented courtesy of the locus standi of Uccelli and Rodrot



6. The objections raised are reiterated in the replying affidavit. Additionally, Rodrot averred that Ventaglio seeks to benefit from the orders and at the same time seeks to have the ruling amended to destroy stratum of the ruling by attacking his locus standi.
7. The prayer for joinder of Ventaglio became spent following the consolidation of this matter and HCCC No. 10 of 2019 in which Ventaglio is the 1st Defendant.
8. I have considered the Application herein. It is common ground that the issue of shareholding and directorship of Salama cuts across this matter as consolidated with HCCC No. 10 of 2019. To delve into the issues raised in this Application and to make any determination thereon, will therefore most certainly pre-empt the consolidated suits. I accordingly decline to consider the said issues and direct that the same be dealt with at the hearing of the consolidated suits. The justice of the case requires the expeditious hearing and determination of these matters which have been pending for far too long. There shall be no order as to costs.

DATED, SIGNED AND DELIVERED VIA MS TEAMS THIS 21ST DAY OF JUNE 2024

M. THANDE

JUDGE

