



**Dhanjal v Dhanjal & another (Miscellaneous Application  
E013 of 2020) [2023] KEHC 767 (KLR) (30 January 2023) (Ruling)**

Neutral citation: [2023] KEHC 767 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
MISCELLANEOUS APPLICATION E013 OF 2020**

**OA SEWE, J**

**JANUARY 30, 2023**

**IN THE MATTER OF SECTION 103 OF THE COMPANIES ACT, NO. 17 OF 2015**

**AND**

**IN THE MATTER OF RECTIFICATION OF THE COMPANIES REGISTER**

**AND**

**IN THE MATTER OF DHANJAL BROTHERS LIMITED**

**AND**

**IN THE MATTER OF THE COMPANIES (HIGH COURT) RULES**

**BETWEEN**

**JOGINDER SINGH DHANJAL ..... APPLICANT**

**AND**

**DHANJAL BROTHERS LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**REGISTRAR OF COMPANIES ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1 Before the Court for determination is the Notice of Motion dated 3<sup>rd</sup> December 2021. It was filed by the 1<sup>st</sup> respondent, Dhanjal Brothers Limited (the company), under section 103 of the *Companies Act*, No. 17 of 2015, sections 3A and 63(e) of the *Civil Procedure Act*, chapter 21 of the Laws of Kenya, section 47 of the *Fair Administrative Actions Act* and rule 7 of the *Companies (High Court) Rules* for the following orders:

a Spent

b Spent



- c That for purposes only of hearing and making a determination of the application herein, the Court be pleased to review and vary its orders granted on 8<sup>th</sup> July 2020;
  - d That subsequent to grant of the prayer sought in [b] above, the Court be pleased to grant orders of injunction restraining the 2<sup>nd</sup> respondent whether by himself or through his agents, or representatives from changing, altering, rectifying or in any way whatsoever making any changes to the records or register of the applicant company pending the hearing and determination of the suit herein;
  - e That pending hearing of the suit herein, the Court be pleased to grant orders of injunction directing the 2<sup>nd</sup> respondent to preserve the register of members and the records of the applicant company as held by the 2<sup>nd</sup> respondent;
  - f That the costs of the application be provided for.
- 2 The application was premised on the grounds that, the 1<sup>st</sup> respondent is a private company, limited by shares; having been incorporated on 23<sup>rd</sup> April 1970 under the repealed Companies Act, chapter 486 of the Laws of Kenya. That the proposed interested parties exited the company in the year 2006 by transferring all their shares to Daljit Singh Dhanjal (hereinafter, “Daljit”) for a consideration of Kshs. 45,000,000/=; and yet vide a letter dated 24<sup>th</sup> November 2021, the 2<sup>nd</sup> respondent indicated to counsel for the proposed interested parties that it was actively engaged in the process of making alterations in the Register of Companies as relates to the 1<sup>st</sup> respondent company. The 1<sup>st</sup> respondent averred that the proposed changes would result in deceased persons being placed on record as members of the Company; and therefore that it is in the interest of justice that the 2<sup>nd</sup> respondent be restrained from effecting the changes, pending the hearing and resolution of this dispute.
- 3 The application was supported by the affidavit of Daljit sworn on 3<sup>rd</sup> December 2021 in which the deponent explained the genesis of this dispute and the background to the instant application. At paragraphs 10 to 17 of his Supporting Affidavit, Daljit explained that, the interested parties having transferred their shares for lawful consideration, there would be no basis for altering the corporate structure of the 1<sup>st</sup> respondent, unless and until a reversal is made and the consideration paid refunded. He further deposed that, in any case, four of the persons who the 2<sup>nd</sup> respondent wants to make members of the company are long dead and incapable of taking up such membership.
- 4 The 1<sup>st</sup> respondent annexed a copy of the impugned letter as Annexure DSD 1 to the Supporting Affidavit and asked that the 2<sup>nd</sup> respondent be restrained from making any changes to the company records pending the hearing and determination of this suit.
- 5 In response to the application, M/s Kibunja & Associates filed Grounds of Opposition dated 12<sup>th</sup> January 2022 on behalf of Joginder Singh Dhanjal (Joginder), the applicant in the main Originating Motion, contending that:
- a The 1<sup>st</sup> respondent has completely misapprehended the application for rectification of the Company Register in that this is not an original suit but a legal process to rectify the Company Register that was fraudulently changed through a settlement agreement which was declared null and void in Succession Cause No. 20 of 2006.
  - b The 1<sup>st</sup> respondent has concealed and misapprehended material particulars in its Notice of Motion, in that a similar application was dismissed by Hon. Njoki Mwangi, J. on 8<sup>th</sup> October 2021 and therefore the matter is res judicata and the instant application is therefore an abuse of the court process.



- c The doctrine of finality has already set in and the 1<sup>st</sup> respondent's voluminous paperwork is only meant to delay the expeditious disposal of Succession Cause No. 20 of 2006 and is a ploy to create unnecessary distraction and a waste of the Court's time
- d As far as the issue of the shares in the company are concerned, the same is res judicata.
- e The application lacks merit, is incompetent and should be struck out.
- 6 Pursuant to the directions given herein on 9<sup>th</sup> December 2021, the application was canvassed by way of written submissions, and timelines were accordingly given for compliance by the parties. The submissions were highlighted by learned counsel on 25<sup>th</sup> May 2022. Thus, Ms. Nduati, counsel for the 1<sup>st</sup> respondent relied on her written submissions dated 16<sup>th</sup> February 2022, in which she gave a detailed background of the dispute and proposed the following issues for determination:
- a Whether the Court should review its orders given on 8<sup>th</sup> July 2021 for purposes of hearing the application dated 7<sup>th</sup> July 2021;
- b Whether the 2<sup>nd</sup> respondent should be restrained from altering the 1<sup>st</sup> respondent's members' register pending the hearing and determination of the main Originating Motion herein;
- c Who should bear the costs of the application?
- 7 Ms. Nduati retraced the history of this dispute and pointed out that when the applicant approached the Court with his Originating Motion dated 22<sup>nd</sup> October 2020, one of his prayers was the rectification of the register of the 1<sup>st</sup> respondent to remove the names and shares of the members and replace them with the following:
- a Joginder Singh Dhanjal and Sukwant Kaur Kundi (1125 shares)
- b Dalip Singh Dhanjal (1135 shares)
- c Narinder Singh Dhanjal (675 shares)
- d Baldev Singh Dhanjal (675 shares)
- e Nirmal Singh Dhanjal (745 shares)
- f Daljit Singh Dhanjal (745 shares)
- 8 Thus, Ms. Nduati submitted that the 1<sup>st</sup> respondent is not out to have the orders of 8<sup>th</sup> July 2021 set aside, but to vary those orders so as to pave way for the hearing of its application and to ensure that the 2<sup>nd</sup> respondent is restrained from altering the company's records in the interim. She added that, as at the time the Court granted orders staying this matter, the company was not aware that the 2<sup>nd</sup> respondent was actively engaged in attempts at altering its register. She therefore urged that, to prevent abuse of its process, the Court ought to vary its orders and hear the company on its application seeking injunction against the 2<sup>nd</sup> respondent pending the hearing of this suit.
- 9 In respect of the second issue, Ms. Nduati submitted that the Originating Motion was premised on the nullification of the Settlement Agreement in Mombasa High Court Succession Cause No. 20 of 2006. She accused the applicant and the proposed interested parties of mischief in that, having obtained stay herein they have been engaging the 2<sup>nd</sup> respondent without the knowledge of the company; and knowing well that four of the names being proposed to be inserted in the register are of deceased persons, some of whose estates are pending administration before the Family Division of the High Court at Mombasa. Counsel relied on *Chama Cha Mawakili Limited v Attorney General & Another*;



- [Law Society of Kenya \(Interested Party\)](#) [2020] eKLR and [Robert Mugo Wa Karanja v Ecobank \(Kenya\) Limited & Another](#) [2019] eKLR to buttress her arguments that the company is entitled to a hearing before changes can be made in its register of members, as it otherwise stands to suffer irreparable harm.
- 10 Ms. Nduati refuted the assertion that the instant application is *res judicata*, by quoting verbatim, at paragraph 42 of her written submissions, the orders prayed for in Mombasa HCCC No. 84 of 2020 (O.S.) which was handled by Hon. Njoki Mwangi, J. She thereby endeavoured to show that those prayers are not the same as the prayers sought herein by the 1<sup>st</sup> respondent. She added that the matter is now before the Court of Appeal and a decision is yet to be made as to whether striking out of the said Originating Motion is defensible. Thus, counsel prayed that an injunction be granted as prayed; the 1<sup>st</sup> respondent having satisfied the principles laid down in *Giella v Cassman Brown & Company Limited* [1973] EA 358.
- 11 In his oral submissions made herein on 25<sup>th</sup> May 2022, Mr. Kibunja took the view that, since the order sought to be reviewed was made by Hon. Chepkwony, J., the 1<sup>st</sup> respondent is in effect asking this Court to sit on appeal in respect of orders made by another judge with concurrent jurisdiction, after it had opted to file an appeal by filing a Notice of Appeal. In respect of the Settlement Agreement, Mr. Kibunja reiterated the applicant's stance that the same was nullified by Hon. Thande, J., whose decision was affirmed on appeal to the Court of Appeal. He added that although the 1<sup>st</sup> respondent sought the leave of the Court of Appeal to appeal to the Supreme Court, the same was declined.
- 12 Thus, according to Mr. Kibunja, the issue around the Settlement Agreement and rectification of the company register is *res judicata*. He added that, in any case, the 2<sup>nd</sup> respondent cannot be a proper respondent in a dispute of this sort; seeing as its duty is to merely execute its statutory mandate. He also raised the question as to whether an injunction can properly issue against the 2<sup>nd</sup> respondent. In essence, Mr. Kibunja urged the Court to find that the 1<sup>st</sup> respondent's application is devoid of merit and to dismiss the same with costs.
- 13 I have given careful consideration to the application dated 3<sup>rd</sup> December 2021, the averments set out in its Supporting Affidavit and the Grounds of Opposition filed by the applicant in response thereto. I have likewise given consideration to the submissions made by learned counsel and the proceedings held herein to date; particularly the ruling/directions dated 8<sup>th</sup> July 2021. It is evident therefrom that the main protagonists in this matter and the related suits, are brothers, namely, the applicant and Daljit, who is the administrator of the estate of their father, Jaswant Singh Boor Singh Dhanjal (deceased). Daljit was the architect of the Settlement Agreement and therefore is currently the majority shareholder in the 1<sup>st</sup> respondent.
- 14 From the material placed before the Court, it is evident that on 30<sup>th</sup> October 2014, the applicant filed Winding Up Petition No. 5 of 2014 seeking the winding up of the 1<sup>st</sup> respondent; and that pending the hearing of that petition, he moved the court handling Succession Cause No. 20 of 2006 for nullification of the Settlement Agreement. His application was successful per the ruling of Hon. Thande, J. dated 13<sup>th</sup> October 2016. The decision was appealed by Nirmal with the support of Daljit whereupon the nullification was upheld by the Court of Appeal vide the judgment dated 15<sup>th</sup> February 2018 in [Nirmal Singh Dhanjal v Joginder Singh Dhanjal & 4 Others](#) [2018] eKLR.
- 15 The parties then went back before Hon. P.J. Otieno, J. in the Winding Up matter and the outcome thereof was that the Court read mischief in the filing of the petition and accordingly struck it out on 14<sup>th</sup> December 2018. Thus, when Hon. Chepkwony, J. was informed of all these developments along



with an application for stay pending resolution of Succession Cause No. 20 of 2006, she issued the impugned ruling/directions dated 8<sup>th</sup> July 2021 to the effect that:

“...the matter be stayed generally to await the determination of the Succession Cause No. 20 of 2006 so as to avoid the court having to adjudicate on the same issue in both matters. And upon conclusion of the Succession Cause, the Applicant be at liberty to elect whether to continue or withdraw the matter herein...”

- 16 In the premises, the issues for determination, as correctly pointed out by learned counsel, are:
- a Whether the Court should review its orders given on 8<sup>th</sup> July 2021 for purposes of hearing the application dated 7<sup>th</sup> July 2021.
  - b Whether the 2<sup>nd</sup> respondent should be restrained from altering the 1<sup>st</sup> respondent’s members’ register pending the hearing and determination of the main Originating Motion herein;
  - c Who should bear the costs of the application?
- 17 Although no reference was made to section 80 of the *Civil Procedure Act* or order 45 rule 1 of the *Civil Procedure Rules* in the subject application, those are the provisions governing applications for review. Section 80 of the *Civil Procedure Act* provides: -
- Any person who considers himself aggrieved—
- a by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or
  - b by a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.
- 18 Order 45 Rule 1 of the *Civil Procedure Rules*, on the other hand, provides as follows: -
- 1 Any person considering himself aggrieved—
- a by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
  - b by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.
- 19 Accordingly, an application for review must, of necessity, be restricted to discovery of new and important matter or evidence which after the exercise of due diligence, was not within the knowledge of the applicant or could not be produced by him at the time when the decree was passed or the order made; or some mistake or error apparent on the face of the record; or for any other sufficient reason. It is also a prerequisite that the application for review be made without un reasonable delay.
- 20 I note that Mr. Kibunja took issue with the fact that the application for review was brought before this Court, yet the order sought to be reviewed was made by Hon. Chepkwony, J. In his view, what the 1<sup>st</sup> has done, in essence, amounts to an appeal to a court of concurrent jurisdiction. I have no hesitation



in rejecting that argument for two reasons. The first is that it is permissible under order 45 rule 2 of the *Civil Procedure Rules* for an application for review to be entertained by another judge where, as in this case, the judge who made the order sought to be reviewed has been transferred and is no longer attached to this station. Secondly, and more importantly, the rule that the application for review be heard by the same judge that made the order is only applicable in instances where the application is brought upon some ground other than the discovery of new and important matter or evidence or existence of a clerical or arithmetical mistake or error apparent on the face of the decree or order. Thus, order 45 rule 2 of the *Civil Procedure Rules* is explicit that:

- 1 An application for review of a decree or order of a court, upon some ground other than the discovery of such new and important matter or evidence as is referred to in rule 1, or the existence of a clerical or arithmetical mistake or error apparent on the face of the decree, shall be made only to the judge who passed the decree, or made the order sought to be reviewed.
- 2 If the judge who passed the decree or made the order is no longer attached to the court, the application may be heard by any other judge who is attached to that court at the time the application comes for hearing.

21 Thus, in *Dubai Bank Kenya Limited v Kwanza Estates Limited* [2015] eKLR, the Court of Appeal held:

“The provision that review applications should be heard by the same judge whose decree or order is being reviewed is a procedural technicality rather than substantive statutory provision which if not complied with due to particular reasons would not go into the root of the matter thereby resulting to a miscarriage of justice. When order 45 rule 1 is read in isolation, it would appear to fortify the appellant’s position that a review should only be entertained by the same court who determined the impugned ruling. However, order 45 rule 2 provides as follows:

- “ 1 An application for review of a decree or order of a court, upon some other ground other than the discovery of such new and important matter or evidence as is referred to in rule 1, or the existence of a clerical or arithmetical mistake or error apparent on the face of the decree, shall be made only to the judge who passed the decree, or made the order sought to be reviewed.\*
- 2 If the judge who passed the decree or made the order is no longer attached to the court, the application may be heard by any other judge who is attached to that court at the time the application comes for hearing.
- 3 If the judge who passed the decree or made the order is still attached to the court but is precluded by absence or other cause for a period of three months next after the application for review is lodged, the application may be heard by such other judge as the Chief Justice may designate.”

As a result, the only limitation there is, is where the review pertains to ‘some other sufficient reason’ that is the only review that must go before the same judge who made the decree or order. It may be heard either by the judge who made the order or by any other judge attendant at the station. By extension, the three-month requirement or rule under order 45



rule 2 (3) is also limited to reviews that do not fall in the ambit of “discovery of new and important matter” or clerical error or mistake. As such, order 45 rule 2(3) is inapplicable to this case. It can thus not be argued that the chief justice had to designate a judge whether within the three months or otherwise; as this was a review that was open and eligible to be heard by any judge in the division at the time.”

22 That puts to rest the argument that the application for review ought to have been placed before Hon. Chepkwony, J. who made the impugned ruling/directions.

23 The applicant also asserted, from the bar, that the application for review is incompetent for the reason that the 1<sup>st</sup> respondent filed a Notice of Appeal in respect of the ruling dated 8<sup>th</sup> July 2021. That argument is also untenable in so far as there is no such Notice on the file. It is also noteworthy that the applicant opted to rely on Grounds of Opposition and thereby missed out on the opportunity to exhibit documents in proof of his assertions. In the premises, I take the view that the application for review is competently before the Court and therefore deserves a merit consideration.

24 The ground relied on by the 1<sup>st</sup> respondent is the discovery that the 2<sup>nd</sup> respondent is in the process of making changes in the membership and shares of the company as borne out of the letter dated 24<sup>th</sup> November 2021. The letter reads in part:

“...In the process of analyzing the record so as to rectify the register in line with the orders, it was noted that there would be a deviation from what the Registry would arrive at as the position of the company and the position communicated by yourselves through your letters. The deviation is particularly in relation to the shares held by Narinder Singh Bur and Baldev Singh Bur...”

25 No doubt this was a new development that would otherwise warrant a review and it is evident that the application was brought without unreasonable delay. I however note that the impugned ruling was not dispositive in any way, but comprised interim measures by the Court pending the hearing and determination of Succession Cause No. 20 of 2006 so as to avoid the potential embarrassment of having two courts of concurrent jurisdiction making conflicting decisions on the same contentious issue, namely, the validity of the Settlement Agreement. Since the issue was ultimately resolved by the Family Court, whose decision was affirmed on appeal, it was open for the parties to revive the pending applications in this matter without necessarily seeking a review.

26 Accordingly, the issue of the instant application being res judicata does not arise. It is also noteworthy that the issue of intermeddling was determined by the Family Court on 13<sup>th</sup> October 2016, while the appeal to the Court of Appeal was concluded on 15<sup>th</sup> February 2018, well before 8<sup>th</sup> July 2021 when the impugned orders were given. Hence, although no further information was availed by the parties as to the current status of Succession Cause No 20 of 2006, it would be inappropriate to order review in the circumstances.

**[b] On whether the Application for Injunction is Tenable:**

27 The 1<sup>st</sup> respondent’s prayer for temporary injunction is in two respects, firstly to restrain the 2<sup>nd</sup> respondent whether by himself or through his agents, or representatives from changing, altering, rectifying or in any way whatsoever making any changes to the records or register of the applicant company pending the hearing and determination of the suit herein; and in the sense of directing the 2<sup>nd</sup> respondent to preserve the register of members and the records of the applicant company as held by the 2<sup>nd</sup> respondent. To my mind, these are but two sides of the same coin; and therefore I will proceed on the basis of the first prayer.



28 Order 40 Rule 1 of the *Civil Procedure Rules*, which is one of the enabling provisions cited by the Plaintiff in support of its application, provides that:

“Where in any suit it is proved by affidavit or otherwise that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongly sold in execution of a decree ... the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders”

29 And, guidance given in this regard in the case of *Giella v Cassman Brown & Co. Ltd*[1973] EA 358, is thus:

“The conditions for the grant of an interlocutory injunction are ...well settled in East Africa. First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience.”

30 Likewise, in *Mrao Ltd v First American Bank of Kenya Ltd & 2 Others* [2003] KLR 123 a *prima facie case* was defined thus:

“A Prima facie case in a civil application includes but not confined to a genuine and arguable case. It is a case in which on the material presented to the Court a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”

31 Moreover, this being an interlocutory application, the Court need not examine closely the merits or otherwise of the plaintiff's case. In *Nguruman Limited v Jan Bonde Nielsen & 2 Others* (*supra*) the Court of Appeal made this point thus:

“We reiterate that in considering whether or not a prima facie case has been established, the court does not hold a mini trial and must not examine the merits of the case closely. All that the court is to see is that on the face of it the person applying for an injunction has a right, which has been or is threatened with violation. Positions of the parties are not to be proved in such a manner as to give a final decision in discharging a prima facie case. The applicant need not establish title it is enough if he can show that he has a fair and bona fide question to raise as to the existence of the right, which he alleges. The standard of proof of that *prima facie case* is on a balance or, as otherwise put, on a preponderance of probabilities. This means no more than that the Court takes the view that on the face of it the applicant's case is more likely than not to ultimately succeed.”

32 The foregoing notwithstanding, Mr. Kibunja raised the issue as to whether an order of injunction can be issued against the 2<sup>nd</sup> respondent, an officer of the Government. It is indeed general position that an order of injunction ought not to issue against the Government or any of its officers. That is however



not to say that such an order cannot issue at all. For section 16(2) of the [Government Proceedings Act](#) is explicit that: -

The court shall not in any civil proceedings grant any injunction or make any order against an officer of government, if the effect of granting the injunction or making the order would be to give any relief against the government which could not have been obtained in proceedings against the government.

33 Thus, the key words in the above provision are “the effect of granting the injunction”. The rationale for this was aptly expressed by Hon. Visram, J. (as he then was) in *Royal Media v Telkom Kenya* [2001] 1E A 210 as follows:

“Where there is a cause of action directly against the Government, there can be no injunction. The appropriate remedy in that case would be to seek declaratory relief against the Government. This is founded on the principles that the King cannot do wrong and that the King cannot be sued in his court”.

34 The learned judge further acknowledged that, if the circumstances warrant it, an injunction can issue against government officials. Here is what he had to say, with which I entirely agree:

“The Court could, in a proper case, issue injunctive relief against Government officers. This relief is similar to the coercive orders that are issued under the judicial review power. This relief would be available not only where the officer was exceeding his authority but also where he was acting in his ostensible authority.”

35 The Court added as follows (at pp 226 – 227):

“The provisions of section 84(2)... give clear power to this Court to ensure that constitutional rights and freedoms are upheld. To do that the Court is given power to ‘make such orders, issue writs and issue such directions as it may consider appropriate’. In the light of this clear power, there is no justification whatsoever to state that this Court has no power to issue [an] injunction against officers of the Government if that remedy is necessary for [the] enforcement of fundamental rights and freedoms under the Constitution. In fact, the statement that no injunction can be issued against officers of the Government has no support in the practice of this Court...”

36 In the same line of thought, the Court of Appeal held thus in [Bluesea Shopping Mall Ltd v the City Council of Nairobi and 3 Others](#), Nairobi Civil Appeal No.129 of 2013:

“It must be realized that courts exist for the purpose of dispensing justice. Judicial officers derive their judicial power from the people or, as Kenyans are wont to say in Kenya, from Wanjiku, by dint of article 159 (1) of the [Constitution](#) which succinctly states that “judicial authority is derived from the people and vests in, and shall be exercised by the courts and tribunals established by or under this [Constitution](#).” article 159 (2) makes it clear that in exercising judicial authority, the courts and tribunals shall be guided by the principles stated in article 10 which include as per article 159 (2) (d) the requirement that “justice shall be administered without undue regard to procedural technicalities.” As Judicial Officers are also State officers, they are enjoined by article 10 of the [Constitution](#) to adhere to national values and principles of governance which require them whenever applying or interpreting the law or the Constitution to ensure, inter alia, that the rule of law, and equity are upheld.



For these reasons, decision of the courts must be redolent of fairness and reflect the best interest of the people whom the law is intended to serve. Such decisions may involve the rights and obligations of the parties to the litigation and therefore relate to the interests of such parties inter se, while others may transcend the interest of the litigants and encompass public interest. In all these cases, it is incumbent upon the Court in exercising its judicial authority to ensure attainment of fairness.”

37 It is therefore instructive that one of the enabling provisions pursuant to which the instant application was brought is section 63 of the *Civil Procedure Act*, which recognizes that:

In order to prevent the ends of justice from being defeated, the court may, if it is so prescribed

—

.....

c grant a temporary injunction and in case of disobedience commit the person guilty thereof to prison and order that his property be attached and sold;

.....

e make such other interlocutory orders as may appear to the court to be just and convenient.

38 The circumstances of the instant case, which involves close family members, are that there is a pending Succession dispute; but at the same time, some of the disputants are eager to implement their interlocutory win, by which the Settlement Agreement was nullified. There appears to be general consensus that the changes made to the membership of the company pursuant to the Settlement Agreement were made for valuable consideration. All the 1<sup>st</sup> applicant is saying is that the current *status quo* be maintained pending resolution of the Originating Motion herein. I am convinced that the proposed changes are profound; and that they are the sort of changes that ought to be made, if at all, after all the parties concerned have been given a hearing.

39 In the premises, I find merit in the 1<sup>st</sup> respondent’s application dated 3<sup>rd</sup> December 2021. The same is hereby allowed and orders granted as hereunder:

a An temporary injunction restraining the 2<sup>nd</sup> respondent whether by himself or through his agents, or representatives from changing, altering, rectifying or in any way whatsoever making any changes to the records or register of the applicant company be and is hereby granted pending the hearing and determination of the suit herein;

b Costs of the application to be costs in the cause.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MOMBASA THIS 30TH DAY OF JANUARY 2023.**

**OLGA SEWE**

**JUDGE**

