



REPUBLIC OF KENYA



Wekhan Investment Limited & another v Wambui & 3 others (Commercial Case E435 of 2019) [2023] KEHC 18655 (KLR) (Commercial and Tax) (26 May 2023) (Ruling)

Neutral citation: [2023] KEHC 18655 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E435 OF 2019**

DAS MAJANJA, J

MAY 26, 2023

BETWEEN

**WEKHAN INVESTMENT LIMITED 1ST PLAINTIFF
STEPHEN MWANGI GITHINJI 2ND PLAINTIFF**

AND

**MARGARET WAMBUI 1ST DEFENDANT
DANSON NGOTHO 2ND DEFENDANT
GRACE NJERI NDERITU 3RD DEFENDANT
ALEX KAMAU 4TH DEFENDANT**

RULING

1. The respondents seek settlement of the order issued on March 8, 2023 on the ground that it does not reflect decision of the court contained in the ruling delivered on December 16, 2021 by Okwany J.
2. This ruling was in respect of the applicant's application dated December 3, 2019 where they sought the following orders:
 - a. Spent.
 - b. That this honourable court be pleased to issue orders restraining the respondents, their agents or anyone acting on their authority from interfering with the bank account, business operations, transactions and/or assets or in any other way purporting to run the affairs of Wekhan Investment Limited pending the hearing and determination of the application.



- c. That this honourable court be pleased to compel the respondents to render account of the 1st applicant company pending hearing and determination of this application.
- d. That this honourable court be pleased to issue orders restraining the respondents, their agents or anyone acting on their authority from interfering with the bank account, business operations, transactions and/or assets or in any other way purporting to run the affairs of Wekhan Investment Limited pending hearing and determination of the suit filed herewith.
- e. This honourable court be pleased to compel the respondents to render account of the 1st applicant company pending hearing and determination of the suit filed herewith.
- f. That this honourable court be pleased to issue any other orders in the interest of justice
- g. That the cost of this application be in the cause.

3. The court considered the application and held as follows:

- 10. With regard to the prayers for orders of injunction to stop the operations of the companies bank account, I find that the applicants did not demonstrate that they how they will suffer irreparable harm that cannot be compensated by damages should the court decline to grant the orders of injunction. Courts have also taken the position that they will not interfere with the running of the affairs of a company (see *Foss v Harbottle* [1843] 2 Hare 461).
- 11. In the upshot, I find that the prayer for orders of injunction is not merited. I however note that the prayer for the rendering of accounts is important to the determination of main suit as it will aid the court in determining the main suit. For this reason, I allow prayer C of the application and direct that the respondents render the accounts within 30 days from the date of this ruling. The costs of this application shall be in the cause.

4. The order approved by the Deputy Registrar and issued by the court on March 8, 2021 reads as follows:

- a. That the respondents be and is hereby compelled to render account of the 1st applicant within 30 days from December 16, 2021 being the date of the ruling.
- b. That costs of this application shall be in the cause.
- c. That mention on March 23, 2022

5. The respondent's complaint arises from the fact that on December 5, 2019, the court granted an *ex-parte* order on the following terms:

- (2) That an order be and is hereby issued restraining the respondents, their agents or anyone acting on their authority from interfering with the bank account, business operations, transactions and/or assets or in any other way purporting to run the affairs of Wekhan Investment Limited pending the hearing and determination of the application.



6. The purport of the ruling as I have shown above is that the plaintiffs' application was in fact dismissed save for prayer No (c) which was granted. The effect of this was to automatically discharge the *ex parte* injunction granted on December 5, 2019. In order to give full effect to the ruling, I direct that the order be amended to read as follows:
- a. The application dated December 3, 2023 be and is hereby dismissed save that the respondents be and are hereby compelled to render account of the 1st applicant company within 30 days from December 16, 2021 being the dated of the ruling.
 - b. That the costs of this application shall be in the cause.
 - c. That mention on March 23, 2022.
7. In the interests of justice and in order to give effect to the ruling delivered on December 16, 2021, I direct that the *ex-parte* order granted on December 5, 2019 be and is hereby discharged.

DATED AND DELIVERED AT NAIROBI THIS 26TH DAY OF MAY 2023

D. S. MAJANJA

JUDGE

