



REPUBLIC OF KENYA



KENYA LAW
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**Patel v Patel & another; Patel & 4 others (Interested Party) (Petition
9 of 2022) [2022] KEHC 12670 (KLR) (28 July 2022) (Ruling)**

Neutral citation: [2022] KEHC 12670 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
PETITION 9 OF 2022**

**EKO OGOLA, J
JULY 28, 2022**

**IN THE MATTER OF R.M PATEL & PARTNERS LIMITED
IN THE MATTER OF THE APPLICATION UNDER SECTIONS
780, 782, 786 AND 789 OF THE COMPANIES ACT 2015**

BETWEEN

SANJEEV PATEL PETITIONER

AND

RAJENI M. PATEL RESPONDENT

AND

RM & PARTNERS LIMITED NOMINAL RESPONDENT

AND

JAYESH RAJENI MANIBHAI PATEL INTERESTED PARTY

HIMESHI RAJENI PATEL INTERESTED PARTY

BANK OF BARODA (KENYA) LIMITED INTERESTED PARTY

PRIME BANK LIMITED INTERESTED PARTY

I & M BANK LIMITED INTERESTED PARTY

RULING

1. Before me for determination is the Interested Party/Applicants' application dated 1st July, 2022 in which they seek the following orders;

1) Spent.



- 2) That pending the hearing and determination of this application inter-partes, an order of injunction be and is hereby issued restraining the Respondents in this application being the Petitioner and the 3rd, 4th and 5th Interested parties from interfering with the daily operations and access to the bank accounts held by the company at the Respondent banks as per the Board Resolutions of the 2nd Respondent company in the Petition herein passed on 24th June, 2022 and further not to interfere with the company whether by itself, directors, shareholders, its employees, servants, agents and or otherwise accessing and operating the subject bank accounts on behalf of and for the benefit of the 2nd Respondent company in the following accounts;
 - a) Bank of Baroda (Kenya) Limited, A/C Nos. xxxx, xxxx, EuroA/C xxxx, USD A/C xxxx, USD LoanA/C xxxx-Term Loan, GBP A/C xxxx.
 - b) Prime Bank Limited Bank, A/C No.xxxx, xxxx.
 - c) I &M Bank Limited Bank A/C Nos. xxxx, EuroA/C xxxx, USD A/C xxxx.
- 3) That pending the hearing and determination of the Applicant's application dated 13th June, 2022 the Respondents in this application being the Petitioner and the 3rd, 4th and 5th Interested parties from interfering with the daily operations and access to the bank accounts held by the company at the Respondent banks as per the Board Resolutions of the 2nd Respondent company in the Petition herein passed on 24th June, 2022 and further not to interfere with the company whether by itself, directors, shareholders, its employees, servants, agents and or otherwise accessing and operating the subject bank accounts on behalf of and for the benefit of the 2nd Respondent company in the following accounts;
 - d) Bank of Baroda (Kenya) Limited, A/C Nos. xxxx, xxxx, EuroA/C xxxx, USD A/C xxxx, USD Loan A/C xxxx-Term Loan, GBP A/C xxxx.
 - e) Prime Bank Limited Bank, A/C No.xxxx, xxxx.
 - f) I &M Bank Limited Bank A/C Nos. xxxx, EURO A/C xxxx, USD A/C xxxx.
- 4) That pending the hearing and determination of this application inter-partes, the Petitioner/ Respondent herein and the 3rd, 4th and 5th Interested Parties be and are hereby restrained by an order of this Court from interfering with the company's operations as per the Board Resolutions of the 2nd Respondent company in the Petition herein passed on 24th June, 2022 by the company and or interfering with the said resolutions in any manner whatsoever.
- 5) That Bank of Baroda (Kenya) Limited, Prime Bank Limited and I &M Bank Limited be and are hereby enjoined in these proceedings as necessary and or Interested parties.
- 6) That pending the hearing and determination of the Petitioner's Application dated 4th April 2022 on 27th September 2022, an order of injunction be and is hereby issued restraining the Petitioner/Respondent together with the 3rd, 4th and 5th Interested parties from interfering with the daily operations and access to the bank accounts held by the company at the Respondent banks as per the Board Resolutions of the 2nd Respondent company in the Petition herein passed on 24th June, 2022 and further not to interfere with the company whether by itself, directors, shareholders, its employees, servants, agents and or otherwise accessing and operating the subject bank accounts on behalf of and for the benefit of the 2nd Respondent company in the following accounts;



- g) Bank of Baroda (Kenya) Limited, A/C Nos. xxxx, xxxx, EuroA/C xxxx, USD A/C xxxx, USD LoanA/C xxxx-TERM LOAN, GBP A/C xxxx.
 - h) Prime Bank Limited Bank, A/C No.xxxx, xxxx.
 - i) I &M Bank Limited Bank A/C Nos. xxxx, EuroA/C xxxx, USD A/C xxxx.
7. That pending the inter-partes hearing and determination of the Petition herein, this Honourable Court be pleased to issue a temporary injunction restraining the Petitioner/ Respondent whether himself, his servants, employees, agents and /or otherwise from issuing any unilateral instructions to freeze any of the company's bank accounts with any of the company's banks including the 3rd, 4th, and 5th Interested Parties herein without due process as per the Memorandum and Articles of the Company.
8. That costs of this application be provided for.
2. The application is premised on the grounds set out therein, and is further supported by the affidavit sworn on 1st July, 2022 by Jayesh Rajeni Manibhai Patel, the 1st Applicant.

Applicants' Case

3. The 1st Applicant deposed that he is a shareholder and a director of the company herein. The Applicants further deposed that there exist urgent, exceptional and special circumstances requiring the urgent intervention by the Court so as to save the company from immediate insolvency, receivership and closure. The Applicants' case is that Kenya Revenue Authority (KRA) has since issued a statutory agency notice against the company on account of non-payment of taxes. The company banks have issued notices for the immediate settlement of outstanding loans and overdraft facilities failure of which they will proceed and recover the outstanding amounts and auction the company's assets.
4. The Applicants maintain that they are the majority shareholders with 70% stake in the company and therefore have locus to file the current application.
5. The Applicants further deposed that on 17th March, 2022 the Petitioner through his Advocates wrote a letter to the 3rd, 4th and 5th Interested Parties instructing them not to allow any transaction on the bank accounts held by each of them in the company's name. The banks in compliance with the said letter have since declined to allow any instructions on the said accounts, this to the detriment of the company.
6. In view of the aforementioned the Applicants contend that the company is now unable to meet its various financial obligations to various parties yet the company is liquid and has sufficient funds held by the said banks.
7. The Applicants blame the Petitioner for the said interruption and further contend that he had no authority to issue the said directives. The Applicants further contend the banks herein were also swift to implement the petitioner's directives without consulting the other directors. The Applicants further contend that as a consequence of the unlawful and unauthorized directives by the Petitioner, the company has been unable to run and operate effectively, resulting into losses and default of its several financial obligations.
8. The Applicants maintain that due to the bad relationship between the 1st Respondent director and the Petitioner who were the sole directors of the company, the company has been unable to run and operate effectively leading to losses and default of its obligations.



9. The Applicants deposed that on 24th June, 2022 the company's Board of Directors met and resolved to authorize and direct the respective banks to allow nominal operations and access to the company's bank accounts. The applicants contend that the said banks have however declined thereby totally paralyzing the company's operations.
10. The Applicants further deposed that in the meeting of 17th June, 2022, the shareholders of the company discussed its ailing financial situation and it was also agreed that they be appointed as additional directors of the company so as to enhance the decision-making process and to clear the deadlock occasioned by the two directors.
11. The Applicants contend that although the Board of Directors in accordance with resolution of 24th June, 2022 had written to the Respondent banks requesting them to lift the freezing orders placed on the company's accounts, the Respondent banks have all refused to allow access and operations of the said bank accounts.
12. According to the Applicants the welfare of more than (50) employees of the company is at greater risk as the company is unable to pay them salaries, wages or provide medical covers as required by the law. The Applicants are apprehensive that this might expose the company to legal sanctions and actions from the relevant government agencies.

Petitioner's Case

13. The application is opposed by Sanjeev Patel, the Petitioner vide the Replying Affidavit dated 13th July, 2022. The Petitioner's case is that the Applicants have no locus to bring this instant application. The Petitioner contends that the Applicants' application dated 13th June, 2022 seeking to be enjoined in these proceedings is still pending before this Court. The Petitioner contends that by virtue of the Applicants not being parties to these proceedings, the Court cannot therefore grant the orders sought.
14. The Petitioner further contends that the applicants are seeking substantive orders against banks that are not parties to the suit.
15. The Petitioner deposed that on 11th April, 2022 he moved Court seeking a temporary injunction against the Respondent from calling, participating in and convening an Extra Ordinary General Meeting of the Nominal Respondent slated for 16th April, 2022 or on any other subsequent meeting for purposes of removing or consenting to his removal as director of the Nominal Respondent as well as the allotment and issuance of 531,000/= ordinary share of Kshs. 100/= which orders he obtained on 14th April, 2022 and the same were extended on 21st June, 2022.
16. The Petitioner further deposed that on 23rd June, 2022 he received a copy of a notice from the 1st Respondent inviting him to attend a special meeting which was scheduled on 24th June, 2022. The Petitioner deposed that he declined to attend the said meeting as the matter was still pending in Court. The Petitioner contends that the Applicants together with the Respondent in utter disregard of the Court orders of 14th April, 2022 convened a meeting and passed resolutions. That in view of the ongoing shareholders/directors dispute, the Petitioner herein notified the respective banks with the view of protecting the Nominal Respondent. The Petitioner maintains that pursuant to his instructions the banks had to act by placing a debit freeze on the said accounts.
17. The Petitioner urged Court not to lift the debit freeze on the said accounts as doing so will afford an avenue for the Applicants and the Respondent to loot the company's funds.



18. The Petitioner denied the allegations that the Nominal Respondent was unable to meet its financial obligations due to the debit freeze. The Petitioner blamed the Respondent for the financial crisis facing the company, which crisis the Petitioner maintained have rocked the company since 2020.
19. The Petitioner's case is that the Applicants are only keen on ensuring that he loses his stake in the Company as minority shareholder.

The 3rd Interested Party's Case

20. The 3rd Interested Party opposed the present application and relied on the Replying Affidavit by Martin Karanu, the Legal Manager, Bank of Baroda sworn on 16th July, 2022.
21. The 3rd Interested Party deposed that on 21st February, 2018 the directors of R.M Estates Limited opened an account at its Eldoret Branch. The 3rd Interested Party further deposed that the directors of R.M Estates Limited had met all the requisite terms and conditions to warrant the opening of the account.
22. The 3rd Interested Party deposed that its Eldoret branch Manager received a letter dated 17th March, 2022 from G & A Advocates LLP notify it that there was an internal dispute involving the directors of R.M Estates Limited. The 3rd Interested party further deposed that its branch manager also received another letter dated 23rd March, 2022 from one of the signatories to the account, one Mr. Rajiv Patel instructing him to debit freeze the account.
23. The 3rd Interested Party maintains that upon receipt of the said letters its branch manager wrote a letter to the directors of R.M Estate Limited informing them of its next course of action. The 3rd interested party's case is that, as a banking institution it acts on, and is bound by the instructions of its customers on matters relating to lawful instructions in dealings in the customer's account. The 3rd Interested Party further deposed that the general terms and conditions signed by the directors of RM Estates Limited constitute binding terms between itself and R.M Estates Limited. Therefore it maintains that it was upon the instructions of an authorized signatory that it proceeded to debit freeze R.M Estate Limited's account and not the Nominal Respondent's account as alluded herein.
24. The 3rd Interested Party maintains that its actions are not laced with any malice whatsoever but were pursuant to explicit instructions from a signatory of RM Estate and in conformity with Clause 20 of the General Terms and Conditions Applicable to Customers accounts.
25. The 3rd interested Party further maintains that the freeze is in relation to RM Estates and not R. M Patel and Partners as alluded by the Applicants. The 3rd Interested Party contends that R.M Estates Limited and R.M Patel & Partners are separate and distinct entities.
26. The rest of the Interested Parties did not file any response to the application. However, Mr. Matakwa, learned counsel for Prime Bank, the 4th Interested Party submitted that they had no objection to unfreezing the accounts and that the 4th Interested Party was ready and willing to comply with any directions from this court.
27. The application was canvassed by way of written submissions. The Applicants filed their submissions on 18th July, 2022 whereas the Petitioner filed his submissions on 19th July, 2022. The 3rd Interested party on the other hand did not file submissions.



Determination

28. I have considered the application, parties' respective responses thereto, the submissions filed by the parties as well as the authorities relied on.
29. The main issues for determination are;
- 1) Whether the 1st and 2nd Interested Parties were properly enjoined to the suit and are necessary parties to the suit.
 - 2) Whether the injunctive orders sought should issue?
30. The Black's Law Dictionary, 9th Edition at page 1232 defines an interested party as;
- “A party who has a recognizable stake (and therefore standing) in the matter”
31. The ‘Mutunga Rules’, Rule 2 of *The Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 defines an interested party as:
- “Interested party” means a person or entity that has an identifiable stake or legal interest or duty in the proceedings before the court but is not a party to the proceedings or may not be directly involved in the litigation;”
32. Rule 7 (2) thereof provides that:
- “A court may on its own motion join any interested party to the proceedings before it.
33. The Black's Law Dictionary 9th Edition, page 1232 defines an interested party as “A party who has a recognizable stake (and therefore standing) in the matter.” It also defines a “Necessary Party” as “a party who being closely connected to a lawsuit should be included in the case if feasible but whose absence will not require dismissal of proceedings.”
34. The elements to be satisfied where a party seeks to be enjoined in proceedings as an interested party are: the intended interested party must have “an identifiable stake” or legal interest or duty in the proceedings.”
35. The main purpose of joining parties to a suit is to enable the court to deal with matters brought before it fully and exhaustively and to avoid a multiplicity of suits. It is a fundamental consideration that before a person can be joined as a party, it must be established that the party has an interest in the case. In addition, it must be clearly demonstrated that the orders sought in the case in question would directly and legally affect the party seeking to be enjoined. These considerations were augmented by the Supreme Court of Uganda in *Departed Asians Property Custodian Board vs Jaffer Brothers Ltd* [1999] I.E.A 55 where the Court held:
- “...for a party to be joined on ground that his presence is necessary for the effective and complete settlement of all questions involved in the suit, it is necessary to show either that the orders sought would legally affect the interest of that person and that it is desirable to have that person joined to avoid multiplicity of suit, or that the defendant could not effectually set up a desired defence unless that person was joined or an order made that would bind that other person.”



36. From the court record, it is evident that there was no leave of Court sought by the 1st and 2nd Interested Parties/Applicants to be enjoined in this suit. I do agree with the submissions of the Petitioner that the participation of the interested parties herein with regard to the filing of this instant application is without leave of court and is to some extent unprocedural.
37. However, I associate myself with the reasoning of Mwangi J in *Kenya Ports Authority vs Kenya Power & Lighting Co. Limited* (2012) eKLR that procedural technicality is a lapse in form that does not go to the root of the suit.
38. In the case of *Communications Commission of Kenya & 4 others vs Royal Media Services Limited & 7 others* [2014] eKLR the Supreme Court of Kenya held that;
- “(22) In determining whether the applicant should be admitted into these proceedings as an Interested Party we are guided by this Court’s Ruling in the Mumo Matemo case where the Court (at paragraphs 14 and 18) held:
- “[An] interested party is one who has a stake in the proceedings, though he or she was not party to the cause ab initio. He or she is one who will be affected by the decision of the Court when it is made, either way. Such a person feels that his or her interest will not be well articulated unless he himself or she herself appears in the proceedings, and champions his or her cause...”
39. It is not disputed that the Applicants are shareholders/directors of the suit company and therefore have a stake in the said company. The record clearly indicates that the Applicants vide the application dated 13th June 2022, sought to be enjoined in these proceedings. It is indeed true that the said application is still pending before this Court. However, the Applicants contend that due to the prevailing circumstances regarding the operations of the suit company there exists an urgent need to seek the intervention of the Court regarding the debit freeze placed on the Nominal Respondent Company. My view is that in an application to join proceedings as a party, the Court should not delve into the merits of the factual basis for the proposed joinder. The settled principle of law is that if in the opinion of the Court the Applicant is a proper or necessary party within the meaning of Order 1 Rule 9 and 10 of the Civil Procedure Rules he/she should be admitted into the proceedings. From the foregoing, I am satisfied that the 1st and 2nd Interested parties have made out a good case for being enjoined in the suit herein, and they are so joined.
40. The facts before this Court clearly show that the Petitioner on his own motion wrote to the Respondent banks instructing them to freeze the suit company’s accounts held by them as there was an internal dispute involving the company’s directors. Pursuant to the said instructions and in accordance with the General Terms & Conditions Applicable to Customer’s Account the Respondent banks then proceeded to freeze the company’s accounts.
41. At this point I must mention that a company is a separate legal entity from the people who compose it although it operates through human agents. Therefore, instructions by an individual director to the Bank to freeze the Company account, should only be acted upon by the Bank if they are backed by a court order or a resolution of the Company under seal, or are in the nature of a report of commission of an offence such as fraud, money-laundering, terrorism-financing, and others on the Company account, and about which the bank has reasonable suspicion that a crime may have or has been committed.
42. The 3rd Interested party has contended that vide the letter dated 1st April, 2022 it did inform the Company’s directors of intention to freeze its account held by them. I have looked at the contents of the said letter and I note that as much as the said letter was meant to bring to the attention of



the other directors of the bank's intention to freeze the company's accounts they were frozen on the very day. Clearly this was not sufficient notice but rather a unilateral decision by the bank and the Petitioner to freeze the company's account. From the foregoing, it is clear that there was no reason for the banks to freeze the company's accounts. Disputes between shareholders and directors regarding the management of a company will always arise. This is not to say that a company's operations/ and or activities should be halted in case of such occurrences.

43. Having found as aforesaid, I hereby directed that the debit freeze placed on the suit company's accounts held by the Interested Party/Respondent banks be and are hereby discharged. The suit company is free to access its funds held in the said accounts so long as in doing so it adheres to the principles of transparency and accountability.
44. Accordingly, the Applicants' application dated 1st July, 2022 is hereby allowed in terms of prayer; 3, 5, 6, 7 and 8.
45. For purposes of clarity the freeze on the Nominal Respondent's accounts held in the following accounts: Bank of Baroda (Kenya) Limited, A/C Nos. xxxx, xxxx, EuroA/C xxxx, USD A/C OD xxxx, USD LoanA/C xxxx-Term Loan, GBP A/C 02/392; Prime Bank Limited Bank, A/C No.xxxx, xxxx and I & M Bank Limited Bank A/C Nos. xxxx, EuroA/C xxxx, USD A/C xxxx is hereby discharged.
46. For the purposes of this application and this Petition, the 1st and 2nd Interested Parties are herewith joined to these proceedings as 1st and 2nd Interested parties respectively.
47. During the pendency of those proceedings, any money withdrawn from the above accounts shall fully be accounted for by the company.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 28TH OF JULY 2022.

E. K. OGOLA

JUDGE

