



**Bhagirajh (pursuant to letters of administration ad litem) v
Rajput & another (Miscellaneous Application E873 of 2020)
[2022] KEHC 13287 (KLR) (Commercial and Tax) (23 September 2022) (Ruling)**

Neutral citation: [2022] KEHC 13287 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E873 OF 2020
A MSHILA, J
SEPTEMBER 23, 2022**

BETWEEN

**CHANDRAKANT DURGADASS BHAGIRAJH (PURSUANT TO LETTERS OF
ADMINISTRATION AD LITEM) APPLICANT**

AND

KIRAN HARILAL RAJPUT 1ST RESPONDENT

REGISTRAR OF COMPANIES 2ND RESPONDENT

RULING

Background

1. The Applicant filed a Notice of Motion dated 14th August 2020 under Section 3 and 3A of the [Civil Procedure Act](#) for orders that;
 - a. In the interim the court do suspend Kirani Harilal Rajput as a signatory of Capitol Laundry Limited in Diamond Trust Bank-South C Branch Current Account No. xxxx pending the hearing and determination of this case.
 - b. The Director of Criminal Investigations (DCI) Industrial Area Police station be directed to investigate the case of forgery of documents in Sheria House File No. C13067 and advise the court within seven (7) days from the date hereof.
 - c. The Registrar of Companies be directed to avail certified copies of Annual Returns from 2012-2017 together with any payment receipts to the applicant herein together with any resolutions in file No. C.-13067 for presentation to DCI officers and CPS-John Katiku for verification.



- d. The Manager Diamond Trust Bank Limited, South C, Nairobi do furnish the Applicant with a bank statement in respect of account Number xxxx -Capitol Laundry Limited from 4th November 2019 to date.
 - e. That costs be in the cause.
2. The Application was supported by the sworn Affidavit of Chandrakant Durgadass Bhagirajh who stated that the only lawful Directors to the company are now deceased. However, the 1st Respondent appointed herself a Director of the company using fraudulent forms purported to have been signed by Harilal Durgadass Rajput (Deceased) and CPS -John Katiku who has denied ever having been appointed the Company Secretary.
 3. The Registrar of Companies has failed to initiate any investigations in this matter since February 2020 to date and it is suspected that his staff or other personnel in the companies registry, were involved in the forgery process.
 4. Further, that the Registrar of Companies approved linking of the account on 19th December 2019 from a deceased persons' account Harilal Durga Dass Rajput hence authorizing an illegality.
 5. The CPS-John Katiku has denied ever having been appointed a Company Secretary and needs the returns to verify his signature and stamp's authenticity.

Applicant's Case

6. It was the Applicant's case that the Applicant herein Chandrakant Durgadass Bhagirajh is the son of the founder of the company now deceased. The shareholding and ownership has all along devolved to the beneficiaries of the Founder of the company.
7. In addition, all the shareholders of the company are deceased and to confirm this the company Auditors on 18th February 2019 had obtained a search of the company which indicated that the Shareholders were: Amritlal Durgadass Bhagra Rajput and Harilal Durgadass Rajput.
8. The Applicant pointed out that Amritlal Durgadass Bhagra Rajput died on 4th May 2012 and Harilal Durgadass Rajput Died on 4th November 2019 in Nairobi death certificates (Marked "C. D. B 2-A-B"). The dates of death speak for themselves that as at the said dates the Directors could not rise from the grave and sign any document or file any returns whatsoever in their own names or e-mail accounts.
9. It came to the attention of the Applicant herein that 1st Respondent had taken over the mandate of running the family company on her own without involvement of the bonafide family members.
10. After the death of Harilal Durgadass Rajput the Advocate on Record one Riunga Raiji for the 1st Respondent read a will which had stated that Harilal was not married and that he bequeathed all his wealth to his deceased brother. The Applicant added that the 1st Respondent is not an expert whom the company requires at the moment and the issue of marriage is left for the family court to handle as to its validity.
11. Sometimes on 12th February 2020 the Applicant conducted a search and realized that the 1st Respondent had appointed herself by fraud as a director of the company without consulting the family at all. The Applicants Lawyer wrote a complaint letter to the 2nd Respondent a copy which is annexed (Marked as "C.D.B.4"). It was discovered that there is on record a stranger in the Name of Kirani Harilal Rajput the 1st Respondent herein.



12. It was also observed that an Annual Returns had been filed for the years 2012 to 2017 and paid for by one receipt which is not in the file on 7th September 2017 however the Returns were stamped as having been received on 7th September 2012.
13. The last Annual Return was filed Online from the deceased Account Harilal Durgadass (deceased) filed on 19th December 2019 which appointed the 1st Respondent as Director without shares. A person who died on 4th November 2019 cannot sign and file returns from his own e-mail account which was linked on 19th December 2019.
14. It was the Applicant's submission that he obtained ad-litem letters of administration dated 27th February 2020 and has authority of the court to bring this suit aforesaid.
15. The Applicant relied on the case of *Judicial Service Commission vs. Speaker of the National Assembly & Another* [2013] eKLR where the Court expressed itself as follows in regard to Conservatory orders:

“Conservatory orders in my view are not ordinary civil law remedies but are remedies provided for under *the Constitution*, the Supreme law of the land. They are not remedies between one individual as against another but are meant to keep the subject matter of the dispute in situ. Therefore, such remedies are remedies in rem as opposed to remedies in personam. In other words, they are remedies in respect of a particular state of affairs as opposed to injunctive orders which may only attach to a particular person.”
16. It was the Applicant's position that the Applicant seeks to preserve a family company which is in the hands of a foreigner by means of fraud. In the case of *Kenya Breweries Ltd & 2 Others —vs- Washington Okeyo* [2002] eKLR the Court of Appeal expressed itself as follows:

“A mandatory injunction can be granted on an interlocutory application as well as at the hearing, but, in the absence of special circumstances it will not normally be granted. However, if the case is clear and one which the court thinks it ought to be decided at once, or if the act done is a simple and summary one which can be easily remedied, or if the defendant attempted to steal a march on the plaintiff.....a mandatory injunction will be granted on an interlocutory application.”
17. The Applicant submitted that the 1st Respondent had no legal capacity whatsoever in law to sign and file the Annual Returns which are acts of forgery and especially the Annual Return dated and signed on 19th December 2019 by a deceased person
18. The Applicant urged the court to grant the Orders as prayed and allow the course of justice in the intended criminal prosecution of forgery to take its course which is an offence of making a document without lawful authority under the Penal Code Section 357 Laws of Kenya.

Respondents' Case

19. The 1st Respondent submitted that through annexures to the Replying Affidavit sworn on 24th August 2020, she has shown that she was appointed as a director of Capitol Laundry limited on 30th December 2012 and was active in the affairs of the company long before the death of the deceased and as such director, was a co-signatory with the deceased of the said company's accounts.
20. It was the Respondent's argument that the Applicant herein purports to bring this suit on the basis of Limited Grant issued on 27th February 2020. The said grant has now however been superseded by the



full grant issued on 9th September 2020 in Nairobi HC SUCC NO. 101 of 2020 to the 1st Respondent and a brother of the deceased.

21. The effect of grant of prayer No.3 of the Application would be to paralyze the operation of Capitol Laundry Limited and no basis has been laid for grant of such a drastic relief or for grant of prayer numbers 5 and 6 as the Applicant herein is neither a director, a shareholder or a representative of a shareholder of Capitol Laundry Limited. Prayer number 4 has been overtaken by events as the Applicant herein has already lodged a complaint at the Industrial area police station. There is therefore no requirement or legal basis for grant of the said prayer.
22. The 1st Respondent reiterated that the Notice of Motion dated 20th July 2020 should be dismissed with costs.

Issues for determination

23. After considering the pleadings filed herewith, the Application and submissions by the parties the Court frames the following issues for determination;
 - a. Whether the Applicant is entitled to the prayers sought?
 - b. Whether the court has powers to issue the orders sought therein?

Analysis

Whether the applicant is entitled to the prayers sought?;

24. It is the understanding of the Court that the Applicant, with regard to prayer No.2 of the Application, is seeking an interim injunction to suspend Kirani Harilal Rajput as a signatory of Capitol Laundry Limited in Diamond Trust Bank-South C Branch Current Account No. xxxx pending the hearing and determination of this case.
25. The principles guiding the court are those settled in *Giella v Cassman Brown* [1973] EA 358. In order to succeed, an applicant must demonstrate that it has a prima facie case with a probability of success, demonstrate irreparable injury which cannot be compensated by an award of damages if a temporary injunction is not granted, and if the court is in doubt, show that the balance of convenience is in its favour.
26. The Applicant submitted that all the shareholders of the company are deceased that is: Amritlal Durgadass Bhagra Rajput and Harilal Durgadass Rajput. Further, the Applicant pointed out that Amritlal Durgadass Bhagra Rajput died on 4th May 2012 and Harilal Durgadass Rajput Died on 4th November 2019 in Nairobi death certificates (Marked 'C. D. B 2-A-B') yet there were Annual Returns filed by the 1st Respondent who had no legal capacity. In this regard the Applicant has established a prima facie case.
27. Has the Applicant demonstrated that it will suffer irreparable damage if the temporary injunction is not granted? The Applicant argued that the injunction is necessary so as to preserve a family company which is in the hands of a foreigner by means of fraud. In such family matters there is a risk that the business may be transferred to third parties to the exclusion of the Applicant and the monies lying in the bank used up and the Applicant as a beneficiary would not be easily compensated in the event the suit is successful;



28. In light of the above, the Applicant has satisfied this court that a temporary injunction suspending Kirani Harilal Rajput as a signatory of Capitol Laundry Limited in Diamond Trust Bank-South C Branch Current account No. xxxx pending the hearing and determination of this case, is merited.

Whether the court has powers to issue the orders sought therein?;

29. It was also Applicant's prayer for the Court to direct the DCI to investigate the case of forgery of the documents. The D.C.I falls under the Inspector General of Police as an independent institution. The Inspector General of Police does not require a court order to undertake its mandate since under Section 24 of the *National Police Service Act*, one of its jurisdiction is to investigate crimes.

30. Further to the above, Article 245 (4) (a) of *the Constitution* states that no person may give a direction to the Inspector General of Police with respect to investigations of any offence or offences. Section 35 (G) of the *National Police Service Act* No. 1A of 2011 allows the Director of Criminal Investigation to undertake forensic analysis while undertaking investigations where a complaint has been lodged as provided by law.

31. Therefore, in this regard the Court cannot intervene to direct the DCI on what to do and it is the Applicant's obligation to lodge a criminal complaint.

Findings and determination

32. For the forgoing reasons this court makes the following findings and determinations;

- i. The Application is found to be partially meritorious.
- ii. This court hereby issues a temporary injunction suspending Kirani Harilal Rajput as a signatory of Capitol Laundry Limited in Diamond Trust Bank-South C Branch Current Account No. xxxx pending the hearing and determination of this case.
- iii. This court finds no legal basis for the grant of prayer No.4 and the same is hereby disallowed.
- iv. The matter be set down for hearing within twelve (12) months from the date hereof.
- v. The documents required can be requested for at the pre-trial conference.
- vi. Mention on 19.10.2022 before the Deputy Registrar for directions.
- vii. The costs of this application to abide the outcome of the suit.

Orders Accordingly

DATED SIGNED AND DELIVERED ELECTRONICALLY AT NAIROBI THIS 23RD DAY OF SEPTEMBER, 2022.

HON. A. MSHILA

JUDGE

In the presence of;

Kiura for the 1st Respondent

Nyaswenta for the Applicant

Lucy.....court Assistant

