



**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI COMMERCIAL & TAX DIVISION**

**CORAM: D. S. MAJANJA J.**

**CIVIL CASE NO. E004 OF 2020 (OS)**

**BETWEEN**

**HELLEN NJUGUINI NJOROGE.....APPLICANT**

**AND**

**GITCO KENYA LIMITED.....1<sup>ST</sup> RESPONDENT**

**JOHN NJOROGE GITANGU.....2<sup>ND</sup> RESPONDENT**

**REGISTRAR OF COMPANIES.....3<sup>RD</sup> RESPONDENT**

**RULING**

1. The Notice of Motion before the court is dated 9<sup>th</sup> January 2020 and in it the applicant seeks the following reliefs of an interim nature:-

- 1) *That this application be certified as urgent and be admitted for hearing on priority during the court recess and service be dispensed with in the first instance and the application be heard exparte.*
- 2) *That pending the hearing and determination of this application an interim injunction do issue restraining the 2<sup>nd</sup> Respondent, his agents, employees and/or servants from acting, representing, binding and/or performing any acts on behalf of the 1<sup>st</sup> Respondent or in any way whatsoever acting as a sole director of the 1<sup>st</sup> Respondent.*
- 3) *That pending the hearing and determination of this suit an interim injunction do issue restraining the 2<sup>nd</sup> Respondent, his agents, employees and/or servants from acting, representing, binding and/or performing any acts on behalf of the 1<sup>st</sup> Respondent or in any way whatsoever acting as a sole director of the 1<sup>st</sup> Respondent.*
- 4) *That pending the hearing and determination of this application an interim injunction do issue restraining the 2<sup>nd</sup> Respondent, his agents, employees and/or servants from operating, managing and/or dealing in any manner any/all accounts belonging to the 1<sup>st</sup> Respondent including and not limited to: -*

*i. EQUITY BANK LIMITED*

*KILIMANI BRANCH*

*Account Number: \*\*\*\*\**

*ii. EQUITY BANK LIMITED*

*KILIMANI BRANCH*

*Account Number: \*\*\*\*\**

*iii. EQUITY BANK LIMITED*

KILIMANI BRANCH

Account Number: \*\*\*\*\*

iv. KENYA COMMERCIAL BANK

HURLINGHAM BRANCH

Account Number: \*\*\*\*\*

5) That pending the hearing and determination of this suit an injunction do issue restraining the 2<sup>nd</sup> Respondent, his agents, employees and/or servants from operating, managing and/or dealing in any manner any/all Accounts belonging to the 1<sup>st</sup> Respondent including and not limited to: -

i. EQUITY BANK LIMITED

KILIMANI BRANCH

Account Number: \*\*\*\*\*

ii. EQUITY BANK LIMITED

KILIMANI BRANCH

Account Number: \*\*\*\*\*

iii. EQUITY BANK LIMITED

KILIMANI BRANCH

Account Number: \*\*\*\*\*

iv. KENYA COMMERCIAL BANK

HURLINGHAM BRANCH

Account Number: \*\*\*\*\*

6) That if this honourable Court deems it fit and just to grant the orders sought in paragraphs 4 and 5 herein above, the court be pleased to direct that the Order/s to be served upon the said banks under whose custody the 1<sup>st</sup> Respondent's bank accounts are domiciled directing the said banks not to allow any access to monies held in the said accounts of the 1<sup>st</sup> Respondent.

7) That an injunction do issue restraining the 2<sup>nd</sup> Respondent, his agents, employees and/or servants from acting as the sole director of the 1<sup>st</sup> Respondent and on behalf of the 1<sup>st</sup> Respondent in wasting, damaging, alienating, selling, removing, disposing or dealing in any way whatsoever with the properties of the 1<sup>st</sup> Respondent pending the hearing and determination of the Main Suit.

8) That costs of this application to be provided for.

2. The applicant's case is founded on an Originating Summons dated 9<sup>th</sup> January 2020 in which she seeks the following reliefs:

1) That a declaration be hereby issued that the removal of the Applicant as a director and shareholder of the 1<sup>st</sup> Respondent was fraudulent, unlawful therefore null and void.

2) That the Registrar of Companies (1<sup>st</sup> Interested Party) be directed to rectify the Company Register of Gitco Kenya Limited by inserting the name of Helen Njuguni Njoroge both as a director and a Shareholder of the company and that the register of Gitco Kenya Limited do reflect the following as the shareholding and directorship of the company:

Shareholding

(i) JOHN NJOROGE GITANGU .....510 shares

(ii) HELEN NJUGUINI NJOROGE.....490 shares

Total .....1,000 shares

*Directorship*

(i) JOHN NJOROGE GITANGU.....Director

(ii) HELEN NJUGUINI NJOROGE.....Director

3) That any acts, conducts and/or activities so far executed and/or performed by the 2<sup>nd</sup> Respondent on behalf of Gitco Kenya Limited as the sole director be declared null and void.

3. In her affidavit in support of the Motion and Summons, the applicant states that she and the 2<sup>nd</sup> respondent incorporated the 1<sup>st</sup> respondent (“the Company”) in 2010. She held 490 shares and the 2<sup>nd</sup> respondent held 510 shares. She deponed that the Company went to acquire and own several properties including a prime property in Karen which she estimated to be valued over Kshs. 50,000,000.00.

4. She further depones that in August 2019, she was denied entry into the Company premises and facilities and as such she could no longer take part in the Company management meetings as a director and shareholder. When she confronted the 2<sup>nd</sup> respondent about the matter, he ignored her concerns. She thereafter sought legal advice and upon enquiry and investigation at the Companies Registry about the status of the Company, she discovered that she was no longer a shareholder and director of the Company as she was purported to have sold her shares to the 2<sup>nd</sup> respondent leaving him as a sole director of the Company.

5. The applicant further stated that her advocates noted several irregularities in the documents lodged at the Companies Registry concerning the ownership and management of the Company. She pointed out for example, that some of the documents had been presented by one Morris Irungu Kariuki who purported to be Secretary of the Company yet such a person was never appointed. That she never attended an alleged meeting on 16<sup>th</sup> May 2016 where it was alleged that the resolutions effecting the changes to the directorship and shareholding were made. Lastly she states that the transfer deed in which it is alleged she relinquished her shareholding was witnessed by one James K. Gitau, an Advocate who had passed away when the alleged documents were executed.

6. Based on the aforesaid facts, the applicant accused the 2<sup>nd</sup> respondent of illegally and unlawfully allocating to himself the Company’s properties which he continues to use for his personal benefit. She claims that she had been locked out of the affairs of the Company to her detriment to and if an injunction is not granted in her favour, she will suffer substantial loss and damage which will not be compensated by an award of damages. Counsel for the applicant urged the court that based on the facts deponed, the applicant had met the threshold for the grant of an interlocutory injunction established in the case of **Giella v Cassman Brown [1973] EA.358**.

7. The respondents opposed the application through the 2<sup>nd</sup> respondent’s replying affidavit sworn on 19<sup>th</sup> January 2020. In the deposition, the 2<sup>nd</sup> respondent stated that the applicant failed to inform the court that they had been married since August 1997 and they have two children and that the parties are involved in divorce proceedings in **Milmani Chief Magistrates Court Divorce Cause No. 1059 of 2019**.

8. The respondents further stated that when they married and in view of their respective professions, both of them incorporated companies with each of them holding majority shares in the company which aligned to their professional interests. He also pointed out that the injected substantial capital in the applicant’s business which has since ceased operations.

9. The 2<sup>nd</sup> respondent’s case is that the parties agreed to change shareholding of the Company and that they had discussions towards reducing her interest in the Company hence she was removed as shareholder and in due course, she processed the relevant documents and brought them to him to lodge at the Companies Registry. He therefore denied he had anything to do with the witnessing a document before a deceased advocate.

10. The 2<sup>nd</sup> respondent stated that the Company is a going concern which shall suffer irreparable loss and damage if the interim orders remain in force as it has financial obligations to meet.

11. The principles guiding the exercise of this court’s discretion are well established in the case of **Giella v Cassman Brown (Supra)**. The applicant has to satisfy three requirements; establish that she has a prima facie case with a probability of success, demonstrate irreparable injury if a temporary injunction is not granted, and if the court is in doubt show that the balance of convenience is in her favour.

12. I note that the applicant did not disclose in the founding documents that she and the 2<sup>nd</sup> respondent were husband and wife and that the particulars of the only Company disclosed; the Karen property, appears to be the matrimonial home. Nonetheless, if the applicant’s allegations are true and she is successful, she remains a minority shareholder in the Company. At this stage I am not required to make definite findings particularly where the factual determinations to be made on the nature and extent of the shareholding involve whether parties attended meetings and or signed certain documents which are matter that may well be ventilated at a full hearing.

13. It is clear though from the material before me is that the Company is a going concern and has financial obligations which if not funded may lead to collapse of the Company. What I see to be the main dispute between the parties is to be found at paragraph 28 of the applicant’s supporting Affidavit which states:

28. That the 2<sup>nd</sup> Respondent has indeed unlawfully and illegally allocated himself the 1<sup>st</sup> Respondent’s properties which he continues to use and operate as his personal property to the detriment of the Applicant which said properties include but not limited to: -

i) Residing in TITLE NUMBER LR 125428

*a property in Karen Nairobi Kenya belonging to the 1<sup>st</sup> Respondent to my detriment, pain and mental anguish.”*

14. It is alleged that the property in Karen is the matrimonial property. Access thereto for the applicant and children of the marriage is a matter that is not before me and is the subject of other proceedings. As regards the Company, I was not shown proof of any other properties owned by the Company or shown evidence that the Karen property has been transferred to third parties or to the 2<sup>nd</sup> respondent. I also reach the same conclusion regarding the money in the 1<sup>st</sup> respondent's bank accounts.

15. I also decline to grant the injunctions sought as the Company would be irreparably damaged to the detriment of both parties. Further, I do not see any evidence that the applicant may be in a position to recompense the Company in the event she succeeds in the suit. In any case her remedy would be in respect of the shares of the Company and not the property of the Company.

16. The Notice of Motion dated 9<sup>th</sup> January 2020 is dismissed. For avoidance of doubt the interim orders in force and granted on 16<sup>th</sup> January 2020 are hereby discharged.

**DATED AND DELIVERED AT NAIROBI THIS 27TH DAY OF JANUARY, 2020.**

**DAVID S. MAJANJA**

**JUDGE**

Court Assistant: Mr. M. Onyango

Ms. Luvai instructed by Oyugi and Company Advocates for the plaintiff.

Mr. Owade instructed by E. A. Oyaró and Company Advocates for the Respondents