



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL AND ADMIRALTY DIVISION

CIVIL SUIT NO. 489 OF 2017

NAYAN MANSUKHLAL SAVLA.....PLAINTIFF

VERSUS

PIYUSH MANSUKHLAL KACHRA SAVLA.....1ST DEFENDANT

MANSUKHLAL KACHRA SAVLA.....2ND DEFENDANT

JUMBO COMMODITIES LIMITED.....3RD DEFENDANT

RULING

1. *Nayan Mansukhlal Savla* (*Nayan*) has brought this action against his brother *Piyush Mansukhlal Kachra Savla* (*Piyush*), his father *Mansukhlal Kachra Savla* (*Mansukhlal*) and the company *Jumbo Commodities Limited* (*the company*).

2. *Nayan* by his plaint alleged that he, *Piyush* and *Mansukhlal* are co-directors of the company. That in *May, 2017*, *Piyush* began to ran the company and operated its bank accounts without involving the other directors. That he *Piyush*, was drawing large sums of money as his salary and petty cash. In paragraph 8 and 10 of the plaint, *Nayan* pleaded in regard to *Piyush's* style running the company as follows:

“that the style of managing Jumbo Commodities Ltd solely in secrecy has culminated in putting the company in huge debts by taking huge loans and overdraft, which in the near future will make it crumble down and ran bankrupt...that owing to this state of affair the 1st defendant (Piyush) has resulted to running the affairs of the 3rd defendant (the company) fraudulently and mismanaging its operations to his advantage to the total exclusion of the other directors...”

3. *Nayan* has by his *notice of motion* dated *15th November, 2017*, sought interlocutory injunction to restrain *Piyush* and *Mansukhlal* from further borrowing huge loans in the company's name, to restrain *Piyush* from fraudulently mismanaging the company's account, a mandatory injunction to issue commanding *Piyush* and *Mansukhal* to involve *Nayan* in the management and financial affairs of the company.

4. Under this ruling, this court was to make a ruling on the notice of motion dated *15th November, 2017* and the defendant's Preliminary Objection dated *25th January, 2018*. I have howerve considered both the application and the Preliminary Objection and all the affidavit evidence and the submissions. It has become clear that this suit is a manifestation of a family feud which is simmering. Moreover, there is no legal basis for granting the injunction sought by *Nayan* because he has not shown a *prima facie* case with probability of success for the injunction to be issued.

5. In my view, and in order to address the underlying problem that the parties before me are facing, I will not make final orders on the Notice of Motion or the Preliminary Objection. I will direct that the parties attend mediation in this matter. If the matter is not resolved through mediation, it shall be referred back to this court.

6. Accordingly, I order the *Mediation Deputy Registrar* of this Court to refer this matter for mediation forthwith.

DATED, SIGNED and DELIVERED at NAIROBI this 30th day of July 2018.

MARY KASANGO

JUDGE

Ruling read and delivered in open court in the presence of:

Court Assistant.....Sophie

..... for the Plaintiff

..... for the Defendants