



**China Road & Bridge Corporations v Econite Mining Company Limited & 6 others; Gikera (Applicant) (Civil Suit 117 of 2015) [2025] KEHC 1445 (KLR) (20 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1445 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
CIVIL SUIT 117 OF 2015  
JK NG'ARNG'AR, J  
FEBRUARY 20, 2025**

**BETWEEN**

**CHINA ROAD & BRIDGE CORPORATIONS ..... PLAINTIFF**

**AND**

**ECONITE MINING COMPANY LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**MERI MWANIWA MERI ..... 2<sup>ND</sup> DEFENDANT**

**BENARD SHUME CHAMUTU ..... 3<sup>RD</sup> DEFENDANT**

**MERI CHIBANGA MERI ..... 4<sup>TH</sup> DEFENDANT**

**JUMA MKALLA MWABEJA ..... 5<sup>TH</sup> DEFENDANT**

**MWANYIWA SHUME MWANYIWA ..... 6<sup>TH</sup> DEFENDANT**

**MERI CHAMUTU MERI ..... 7<sup>TH</sup> DEFENDANT**

**AND**

**STEPHEN NJOROGE GIKERA ..... APPLICANT**

**RULING**

1. The Applicant filed a Notice of Motion application dated 6<sup>th</sup> September 2023 under Certificate of Urgency pursuant to Section 5 of the *Judicature Act*, Rule 81.17 of the *Civil Procedure (Amendment No. 2) Rules*, 2012 of England, Sections 3, 3A, 63 (e) of the *Civil Procedure Act*, Article 159 (2)(d) of the *Constitution*, and all other enabling provisions of the law.
2. The Applicant seeks for orders that this court be pleased to grant leave to the Applicant to file perjury proceedings against Hon. Chirau Ali Mwakwere, that this court be pleased to grant an order compelling Hon. Chirau Ali Mwakwere to appear in court to answer to of giving false information



and for interference with the administration of justice, that this court be pleased to commit the said Hon. Chirau Ali Mwakwere to civil jail and penalize him to a fine upon finding him guilty of perjury, that this court be pleased to issue any such orders as it may deem fit and just, and that the cost of and occasioned by this application be borne by Hon. Chirau Ali Mwakwere.

3. The application is premised on grounds on its face and the Supporting Affidavit sworn by the Applicant on 6<sup>th</sup> September 2023 that on 2<sup>nd</sup> March 2023, the court summoned Hon. Chirau Ali Mwakwere to attend court on 9<sup>th</sup> March 2023 to testify as to the financial records of the 1<sup>st</sup> Defendant. That on the said date, he did attend court and intentionally and knowingly lied to court that he had no association with the 1<sup>st</sup> Defendant at all and further denied receipt of any money from the Applicant on behalf of the 1<sup>st</sup> Defendant. That in addition, Hon. Chirau Ali Mwakwere swore an affidavit under oath on 15<sup>th</sup> March 2023 in which he completely dissociated himself from the 1<sup>st</sup> Defendant and further denied knowledge of the affairs of the 1<sup>st</sup> Defendant or receipt of any funds from the Applicant for the benefit of the 1<sup>st</sup> Defendant.
4. The Applicant further stated that on 12<sup>th</sup> May 2023, this court issued orders lifting the veil of incorporation of the 1<sup>st</sup> Defendant and held that the Applicant was the sole brain behind the 1<sup>st</sup> Defendant and as such the Applicant was liable to pay the entire decretal amount as adjudged against the 1<sup>st</sup> Defendant in the decree together with the costs of all the persons awarded costs in that ruling except Shee Hamisi Mwamindi. That the said orders were made based on the false statements made by Hon. Chirau Ali Mwakwere, denying any relationship with the 1<sup>st</sup> Defendant, albeit knowing he was the founder of the 1<sup>st</sup> Defendant and had received the sum of Kshs. 5,520,000.00 from the Applicant's firm. That the false information submitted by Hon. Chirau Ali Mwakwere has occasioned the Applicant herein great prejudice, ridicule and tarnished his name as well as occasioned him to pay a debt he could not have been adjudged had the said Hon. Chirau Ali Mwakwere been truthful.
5. In response, Hon. Chirau Ali Mwakwere in an affidavit sworn on 23<sup>rd</sup> July 2024 that on 9<sup>th</sup> March 2023 all the directors and former directors took stand and were examined in his presence but none of them made any allegations linking him to the 1<sup>st</sup> Defendant, and that they were cross examined by his advocate. That he also took the stand where he was examined by his advocate and cross examined by the directors through their appointed advocates. That the court rendered its ruling on the matter on 12<sup>th</sup> May 2023 whereby the court lifted the veil of the company and found out that the Applicant was the sole brain behind the 1<sup>st</sup> Defendant and received the entire sum of Kshs. 11,000,000. That the court discharged Hon. Chirau Ali Mwakwere from the summons and granted him costs of Kshs. 100,000 payable by the Applicant and which amount is yet to be paid.
6. Hon. Chirau Ali Mwakwere further stated that the ruling of the court of 12<sup>th</sup> May 2023 has not been appealed, reviewed and/or set aside by the court and as such the same remains binding as against the Applicant herein. That the 1<sup>st</sup> Defendant is a legal person on its own and cannot make payments to any person without the resolution of its directors and/or shareholders. That the Applicant was not the only director at the time but he is the only one making the allegations herein. That the court in its ruling found out that the 1<sup>st</sup> Defendant did not have any bank accounts and therefore did not receive any funds and therefore it not receive any funds. That all the monies totaling to Kshs. 11,000,000 were paid to the firm of Gikera Vadgama and that the Applicant used the other directors to create a façade that enabled him perpetuate fraud.
7. The Applicant filed a Supplementary Affidavit sworn on 22<sup>nd</sup> July 2024 that on 9<sup>th</sup> March 2023, Hon. Chirau Ali Mwakwere knowingly made false statements before this court that he had never had any dealings with the 1<sup>st</sup> Defendant, had never received any money from the Applicant and was unaware of the proceedings relating to the suit against the 1<sup>st</sup> Defendant. That contrary to the assertion that



- Hon. Chirau Ali Mwakwere was unaware of the matters concerning the dispute between the Plaintiff and the Defendant, the Applicant states that he regularly informed him of the progress whenever he attended court, including proceedings related to cross examination of the 1<sup>st</sup> Defendant's directors.
8. The Applicant further stated that after the ruling directing payment of the entire decretal sum, he entered into a consent with the Plaintiff regarding the payment terms and it was agreed that he would pay the Plaintiff a total of Kshs. 11,140,230.24 inclusive of interest and costs. That he has so far paid Kshs. 8,328,023.00 with a pending balance which has been detrimental to him while Hon. Mwakwere continues to benefit from the funds received from the firm on behalf of the 1<sup>st</sup> Defendant
  9. The application was canvassed by way of written submission. The Applicant filed submissions dated 23<sup>rd</sup> July 2024 and cited Section 11 of the [Oaths and Statutory Declarations Act](#) which defines perjury and Section 108 of the [Penal Code](#) which prescribes offences relating to administration of justice and their penalties. The Applicant further relied on the decision in the case of [James Mulinge v Freight Wings Ltd & 3 Others](#) (2016) eKLR which also cited with authority the case of [David Omwenga Maobe v Republic](#) (2015) eKLR, and [R v Archer](#) (2003) 1 Cr. Appeal R (5) 86 when dealing with perjury set out the elements of the offence to include a person who being a lawfully sworn witness or interpreter, in judicial proceedings, deliberately makes a material statement which is false, and knowing that it is false or not believe it to be true. The Applicant submitted that Hon. Chirau Ali Mwakwere attempted to subvert the course of justice by committing acts of perjury. That the averments made by Hon. Chirau Ali Mwakwere in his affidavit were false and that the statements made on oath in court on 9<sup>th</sup> March 2023 and in his affidavit translate to false statements. The Applicant therefore sought the court to grant leave to cite Hon. Chirau Ali Mwakwere for perjury and once leave is granted, summon him to answer to charges of giving false information and to find him guilty of perjury, and commit him to civil jail or to pay a fine for the offence of perjury.
  10. The Respondent filed submissions dated 1<sup>st</sup> October 2024 by relying on the ruling of this court delivered on 12<sup>th</sup> May 2023 where the court lifted the veil of Econite Limited. That while the company is a separate entity from its directors and proxies, it is clear that the court upon lifting the veil of the company found out the brain behind the company and established that cheques totaling to Kshs. 11,000,000 were paid to the firm of Gikera Vadgama. That the Applicant was not only the sole director but doubled as the company's advocate and received money on behalf of the company. That there were many advocate-client dealings between Mr. Gikera's firm and Hon. Mwakwere as Mr. Gikera's bank statements reveal. That the transactions that Mr. Gikera relies upon to support his allegations of perjury against Hon. Mwakwere was one of the many. That pursuant to Section 107 – 109 of the [Evidence Act](#), it is upon Mr. Gikera to prove to this court that Mr. Mwakwere received the funds for and on behalf of Econite Limited. The Respondent cited the case of [James Mulinge v Freight Wings Ltd & 3 Others](#) (2016) eKLR that set out the elements for standard of proof of perjury which also cited with authority the case of [Ochino & Others v Okombo & Others](#) (1989) KLR 165.
  11. I have considered the Notice of Motion application dated 6<sup>th</sup> September 2023, the affidavit by Hon. Chirau Ali Mwakwere sworn on 23<sup>rd</sup> July 2024, the Supplementary Affidavit sworn on 22<sup>nd</sup> July 2024, and submissions by the parties. The issue for determination is whether the application is merited for grant of the orders sought.
  12. The Applicant stated that Hon. Chirau Ali Mwakwere attended court on 9<sup>th</sup> March 2023 to testify as to the financial records of the 1<sup>st</sup> Defendant where he intentionally and knowingly lied that he had no association with the 1<sup>st</sup> Defendant at all and further denied receipt of any money from the Applicant on behalf of the 1<sup>st</sup> Defendant. That he also swore an affidavit under oath on 15<sup>th</sup> March 2023 in which he completely dissociated himself from the 1<sup>st</sup> Defendant and further denied knowledge of the affairs of



the 1<sup>st</sup> Defendant or receipt of any funds from the Applicant for the benefit of the 1<sup>st</sup> Defendant. That adverse orders were made against the Applicant based on the false statements made by Hon. Chirau Ali Mwakwere denying any relationship with the 1<sup>st</sup> Defendant albeit knowing he was the founder of the 1<sup>st</sup> Defendant and had received the sum of Kshs. 5,520,000 from the Applicant's firm.

13. The Respondent stated that all directors and former directors took stand and were examined but none of them made any allegations linking him to the 1<sup>st</sup> Defendant. That the court rendered its ruling in the matter on 12<sup>th</sup> May 2023 where it lifted the veil of the company and found out that the Applicant was behind the 1<sup>st</sup> Defendant and had received the entire sum of Kshs. 11,000,000. That the court discharged Hon. Chirau Ali Mwakwere from the summons and granted him costs of Kshs. 100,000 payable by the Applicant.

14. Section 108 (1) of the *Penal Code* provides: -

- a. Any person who, in any judicial proceeding, or for the purpose of instituting any judicial proceeding, knowingly gives false testimony touching any matter which is material to any question then pending in that proceeding or intended to be raised in that proceeding, is guilty of the misdemeanour termed perjury.
- b. It is immaterial whether the testimony is given on oath or under any other sanction authorized by law.
- c. The forms and ceremonies used in administering the oath or in otherwise binding the person giving the testimony to speak the truth are immaterial, if he assent to the forms and ceremonies actually used.
- d. It is immaterial whether the false testimony is given orally or in writing.
- e. It is immaterial whether the court or tribunal is properly constituted, or is held in the proper place or not, if it actually acts as a court or tribunal in the proceeding in which the testimony is given.
- f. It is immaterial whether the person who gives the testimony is a competent witness or not, or whether the testimony is admissible in the proceeding or not.

15. The court in *James Mulinge v Freight Wings Ltd & 3 Others* (2016) eKLR held as follows: -

“In addition to the statutory perjury offences which deal with the criminality of undermining the administration of justice, there is a common law offence of perverting the course of justice. Any act or course of conduct tending and intended to interfere with the course of public justice will amount to an offence. This offence is triable only on prosecution by the Court. This offence will usually only be charged where there are serious aggravating features as held in *R v Sookoo* (2002) EWCA Crim 800.

As set out above, the consequences of perjury are severe. Where found culpable, the person who commits such an offence faces a sanction that may include denial of liberty similar to consequences for contempt of Court proceedings. Previously such proceedings have required a party to seek the leave of the Court to commence proceedings for perjury and for the person against whom such leave is sought to have notice of the consequences of the same before being sanctioned.

...



However, the law upon which such leave is required was based on the Laws of England, which laws have since changed. To thus continue relying on the same and by extension require a party to apply for leave so as to commence perjury proceedings particularly in a civil matter or employment and labour relations matter such as this one, would be to negate the changes since made in England and the principles of the Bill of Rights as set out under article 48 of the Constitution on access to justice. Where the Court finds a party under oath has given false averments, this Court basing its findings on the basis of such sworn affidavit and where found false, there is the inherent powers of the Court to punish. As a superior Court of record, a party who makes a false affidavit knowing the same to be so, not only commits perjury but the same amounts to an abuse of Court process.”

16. It is not in dispute that the Applicant, Mr. Gikera was appointed as a Nominee Director and Shareholder of Econite Mining Company Limited. The company sub-let leased parcel of land in Taru area within Kwale County to China Road & Bridge Corporations (K) Limited and as a result cheques for Kshs. 8,000,000 were paid to Mr. Gikera.
17. Hon. Chirau Ali Mwakwere in his affidavits sworn on 15<sup>th</sup> March 2023 and 23<sup>rd</sup> July 2024 denied ever receiving any amount of money from Econite Mining & Co. Ltd or from Mr. Gikera. However, a copy of the statement of account from Kenya Commercial Bank shows cheque payments by China Road & Bridge Corporations (K) Limited amounting to Kshs. 8,000,000 credited to the account on 29<sup>th</sup> October 2014 and payments of Kshs. 5,520,000 debited from the account to Hon. Ali Chirau Mwakwere on 31<sup>st</sup> October 2014.
18. This court further notes that Hon. Chirau Ali Mwakwere in the affidavit sworn on 15<sup>th</sup> March 2023 under paragraph 19 denies being aware of the fact that the company had a case in court. On the contrary, the Applicant has annexed to their Supplementary Affidavit sworn on 22<sup>nd</sup> July 2024 correspondences between the Applicant’s advocates and Mr. Mwakwere on the progress of the said case which correspondences date back to July 2021.
19. This court finds that the evidence presented to this court contradicts Hon. Chirau Ali Mwakwere’s statements under oath knowing the same to have been false with the intention of defeating the course of justice.
20. In the upshot, the Notice of Motion application dated 6<sup>th</sup> September 2023 is merited in terms of prayer (2). Costs of the application to be borne by Hon. Chirau Ali Mwakwere.

**DATED AND DELIVERED VIRTUALLY AT MOMBASA THIS 20<sup>TH</sup> DAY OF FEBRUARY, 2025**

**J.K. NG’ARNG’AR, HSC**

**JUDGE**

In the presence of: -

..... Advocate for the Plaintiff

..... Advocate for the Defendant

Court Assistant – Shitemi

