



REPUBLIC OF KENYA



**Njeru v Kirundi & 13 others (Commercial Petition E002 of 2025)  
[2025] KEHC 1329 (KLR) (Commercial and Tax) (24 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1329 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL PETITION E002 OF 2025  
JWW MONG'ARE, J  
FEBRUARY 24, 2025**

**BETWEEN**

**ENOS NJIRU NJERU ..... PETITIONER**

**AND**

**GEOFFFREY CHEGE KIRUNDI ..... 1<sup>ST</sup> RESPONDENT**

**KAGOMBE GABRIEL GATHUKA ..... 2<sup>ND</sup> RESPONDENT**

**JAMES GITHINJI MWANGI ..... 3<sup>RD</sup> RESPONDENT**

**DAVID NDUNG'U WANJOHI ..... 4<sup>TH</sup> RESPONDENT**

**JOHN MITHAMO WASUSANA ..... 5<sup>TH</sup> RESPONDENT**

**BAPTISTA MURIKI KANYARU ..... 6<sup>TH</sup> RESPONDENT**

**PHILIP KIPKEMOI LANGAT ..... 7<sup>TH</sup> RESPONDENT**

**ERICK KIPYEGON CHEPKWONY ..... 8<sup>TH</sup> RESPONDENT**

**VINCENT ATEI ARISI ..... 9<sup>TH</sup> RESPONDENT**

**JAMES OMBASA OMWENO ..... 10<sup>TH</sup> RESPONDENT**

**FRANCIS WANJAU KIMOTHO ..... 11<sup>TH</sup> RESPONDENT**

**WILSON MUTHAURA ..... 12<sup>TH</sup> RESPONDENT**

**MATHEWS ODERO ..... 13<sup>TH</sup> RESPONDENT**

**KENYA TEA DEVELOPMENT AGENCY HOLDINGS LTD 14<sup>TH</sup> RESPONDENT**



## RULING

1. The Petitioner filed the present suit by way of a petition dated 29<sup>th</sup> January 2025 claiming he was unlawfully, unprocedurally and irregularly removed as the Chairman of the 14<sup>th</sup> Respondent(KTDA) by the 1<sup>st</sup> -13<sup>th</sup> Respondents who serve as members of its Board of Directors in a meeting that was held on 23<sup>rd</sup> January 2025.
2. Together with the petition, the Petitioner also filed the Notice of Motion dated 29<sup>th</sup> January 2025 seeking to restrain the Respondents from publishing, announcing, or disseminating in any form, including via social media, mass media, or any other public platform, any information, statements, or communications purporting to remove him as the Chairman of the Board of Directors of KTDA.
3. The Petitioner also seeks to compel the Respondents to immediately retract and take down any and all publications, notices, announcements, or statements, whether in print, electronic, or digital form, that have been disseminated purporting to remove him as the Chairman of the Board of the KTDA. This application is supported by the grounds set on its face, and the undated affidavit of the Petitioner and his affidavit sworn on 11<sup>th</sup> February 2025.
4. The Respondents oppose the application through the replying affidavit KTDA's Company Secretary, Mathews Odero, sworn on 6<sup>th</sup> February 2025. On 31<sup>st</sup> January 2025, the court granted the Petitioner ex parte temporary relief when it stayed the resolution passed by the Respondents on 23<sup>rd</sup> January 2025 and further restrained them from interfering in any manner whatsoever with the Plaintiff's operations, discharge of functions, and access to the office of Chairman of the Board of Directors of KTDA.
5. This prompted the Respondents to file the Notice of Motion dated 3<sup>rd</sup> February 2025 seeking to set aside the said ex parte orders as well as striking out the application in its entirety. This application is supported by the affidavits of Mathews Odero sworn on 3<sup>rd</sup> February 2025, 12<sup>th</sup> February 2025 and 13<sup>th</sup> February 2025 and opposed by the Petitioner through his affidavits sworn on 5<sup>th</sup> February 2025 and 18<sup>th</sup> February 2025.
6. The Petitioner also filed the Notice of Motion dated 10<sup>th</sup> February 2025 in which he seeks the leave of court to amend its application of 29<sup>th</sup> January 2025 which has been responded to by the Respondents through their Grounds of Opposition dated 13<sup>th</sup> February 2025. The three applications have been canvassed by way of oral and written submissions which I have considered and together with the pleadings, I will make relevant references to in my analysis and determination below.

### Analysis and Determination

7. From the parties' pleadings and submissions, the following issues arise for determination:-
  - a. Whether the ex parte orders of 31<sup>st</sup> January 2025 should be set aside and whether the application and Petition of 29<sup>th</sup> January 2025 should be struck out
  - b. If a) is in the negative, whether the injunctive orders sought by the Petitioner should be granted
  - c. Whether the court should grant leave to the Petitioner to amend his application of 29<sup>th</sup> January 2025.



## Setting aside the ex parte orders and striking out the petition and the application

8. The Respondents state and submit that the Petitioner's application and Petition do not raise any constitutional matter to warrant the intervention of the court and that the Petitioner has been filing a plethora of law suits and petitions (HC Comm E045 of 2025 and HC Petition E044 of 2025) before filing the present suit which he did not reveal to the court and that he has been forum shopping over this matter.
9. In response, the Petitioner submits that HC Petition E044 of 2025 was withdrawn and thus, no petition is pending before any court and that there exists no legal provision mandating the disclosure of a matter that has been duly withdrawn. I disagree. In *Mary Wairimu Gikunju v Republic & 3 others* [2014] KECA 666 (KLR) the Court of Appeal cited with approval the case of *Brink's-Mat Ltd v Elcombe and others* [1988] 3 All ER 188 where it was held as follows:

“The material facts are those which it is material for the judge to know in dealing with the application as made; materiality is to be decided by the court and not by the assessment of the applicant or his legal advisers”
10. It is therefore my understanding of the findings in the above decision not for parties to decide whether certain proceedings are material to a case or not. A party, especially one that is seeking exparte orders, has a duty to make full rank and disclosure of all similar proceedings between the parties, whether the same have been withdrawn or not and it is upon the court to decide upon the materiality and effect of such a withdrawal to their case.
11. The Petitioner agrees that he filed HC Comm E045 of 2025 before this court where it sought injunctive orders similar to those sought in his application herein. It is also not contested that the court (Mulwa J.,) did not grant any injunctive orders on this application but instead issued directions that the matter was scheduled for a mention on 26<sup>th</sup> February 2025. This was not disclosed by the Petitioner in his application and yet it was an important aspect that could have tipped the scales as to whether to grant the ex parte injunction orders.
12. The Court of Appeal in *Mary Wairimu Gikunju v Republic*(supra) held that in determining whether a litigant is guilty of material non-disclosure it is important to consider his intention or motive. In this matter, it is clear that had the Petitioner disclosed that there is or was a pending suit involving the same parties and that Justice Mulwa had not granted any injunctive relief, the court would probably not have given him the relief sought herein. So, I find that there is an obvious motive to deceive, by misrepresenting the true facts, so that the Petitioner could obtain the injunctive reliefs and continue serving as Chairman of KTDA and in the process, unfairly stealing a march over the Respondents.

This prejudiced the Respondents as the management operations of KTDA were definitely affected by the ex parte orders making the nondisclosure material and this helped the Petitioner gain an undue advantage in the affairs of KTDA.
13. I also agree with the Respondents that the timing of filing this petition and the previous suit, being one day apart, is demonstrative of the Petitioner staking out the two courts and waging for a favourable outcome in either, a classical and embarrassing case of forum shopping. This cannot be countenanced by the court and the Petitioner has to be stopped in his tracks since it is inequitable and therefore, he is not entitled to any equitable relief including the ones sought in the present application. I therefore find merit in the Respondents' application dated 3<sup>rd</sup> February 2025 that the exparte orders of 31<sup>st</sup> January 2025 ought to be discharged.



14. As to whether the petition and the application ought to be struck out, there is no indication that the suit HC Comm E045 of 2025 has been withdrawn. It is clear that the said suit together with the present one cannot run parallel to each other lest the two courts issue conflicting orders over the same parties and subject matter, thus offending the doctrine of res subjudice. Therefore, this suit must give way to HC Comm E044 of 2025 which was first in time and therefore, this suit is struck out at this point.

### **Conclusion and Disposition**

15. The upshot is that the Petition and the application dated 29<sup>th</sup> January 2025 are struck out. The Interim Orders in force are hereby vacated and discharged forthwith. Cost of this application are awarded to the Respondents.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 24<sup>TH</sup> DAY OF FEBRUARY 2025.**

.....

**J.W.W. MONGARE**

**JUDGE**

In the Presence of:-

1. Mr. Royford Mwenda for the Plaintiff /Applicant.
2. Mr. Paul Muite SC and Mr. Kithinji Marete for the Defendants/Respondents.
3. Amos- Court Assistant

