



**TRV Developers Limited v Chavda (Commercial Case E229 of 2024)
[2025] KEHC 1995 (KLR) (Commercial & Admiralty) (13 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1995 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND ADMIRALTY
COMMERCIAL CASE E229 OF 2024
PM MULWA, J
FEBRUARY 13, 2025**

BETWEEN

TRV DEVELOPERS LIMITED PLAINTIFF

AND

JAYESH TRIBHOVAN CHAVDA DEFENDANT

RULING

1. The Notice of Motion dated 29th April 2024, brought under Order 41 Rule 1 and 4 of the Civil Procedure Rules, Sections 1A, 1B and 3A of the [Civil Procedure Act](#) seeks the following orders:
 - a. Spent
 - b. A temporary injunction do issue restraining the Defendant either by himself, agents, servants and or anyone claiming under from interference with any of the Applicant's business operations and client relationships on any matter present or in the future pending the hearing and determination of the main suit.
 - c. A temporary injunction do issue restraining the Defendant either by himself, agents, servants and or anyone claiming under the Defendant from calling the Applicant's clients and customers asking for payment details and promising dealings in property and any further attempts to interfere with the Applicants clients' operations or relationships pending the hearing and determination of this application.
 - d. An order of permanent injunction restraining the Defendant either by himself, agents, servants and anyone claiming under the Defendant from any interference with any of the Applicant's business operations and client relationship on any matter either present or future and any further attempts to interfere with the applicant's operations or client(s) relationships.



- e. That the OCS Parklands police Station to ensure compliance of the orders.
 - f. Costs of the Application be in the cause
 - g. Any other relief the court may deem fit in the circumstances.
2. The application is premised on the grounds on the face of it and supported by the annexed affidavit of Purshottam Premji Vera, sworn on 29 April 2024 and the further Affidavit of Virji Meghji Patel sworn on 30th July 2024. They both assert they are directors of the Plaintiff company, where the Defendant resigned on 25th January 2022 and ceased being a director, but without any color of right, continues to interfere with the company's clients and businesses.
 3. Virji asserts that Tribhovan is only a shareholder and not a director of the company and thus lacks the authority to appoint the Defendant in any capacity to represent the company. He avers the removal of Tribhovan as a director and the subsequent appointment of Purshottam was conducted in accordance with the law. He maintains the Defendant's involvement with the affairs of the company is unlawful and detrimental to the Company.
 4. In response, Jayesh Tribhovan Chavda filed the Replying Affidavit sworn on 2nd July 2024. He avers that he was engaged by the Applicant's majority shareholder Tribhovan Lalji Chavda as the Sales and Marketing Director long after his resignation and received a salary for the same. His duty entails interacting with the Applicant's clients and customers purchasing or letting the Applicant's properties. He denies any interference with clients and/or business relationship.
 5. Tribhovan further asserts that the Plaintiff's request for conservatory orders is unfounded and could harm Tribhovan Lalji Chavda, who is unable to engage clients due to health reasons. He urges the court to consider the illegal attempts by the Virji to remove Tribhovan as a director of the Company. He seeks the dismissal of the Plaintiff's application with costs.
 6. The application was heard by way of written submissions. The Plaintiff filed submissions dated 30th July 2024, and the Defendant filed submissions dated 28th October 2024.

Analysis and determination

7. I have looked at the application, the affidavits in support and against the application, the submissions and the evidence attached hereto. The main issue for determination is whether the Plaintiff has satisfied the conditions upon which the orders sought ought to be granted.
8. The Plaintiff seeks a temporary and permanent injunction to restrain the defendant from engaging with the affairs and business of the company. The law and principles governing the granting of a temporary injunction are set out under Order 40(1) (a) and (b) of the Civil Procedure Rules, 2010 as follows:

Where in any suit it is proved by affidavit or otherwise—

- a. that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or
- b. that the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit, the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and



preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.

9. The conditions for granting injunctions are well stipulated in the case of *Giella v Cassman Brown & Company Limited* (1973) E.A. 358, thus:

“First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the Court is in doubt, it will decide an application on the balance of convenience.”

10. Further, the Court of Appeal in *Nguruman Limited v Jan Bonde Nielsen & 2 others* (2014) eKLR reiterated the above principles and emphasized that these three pillars form the foundation of any injunction order, whether interlocutory or permanent. It was established that these three conditions must be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially.
11. The first condition that must be met for an injunction to be granted is that the applicant must show a prima facie case with a probability of success. What constitutes a prima facie case is defined in *Mrao Ltd v First American Bank of Kenya Ltd & 2 others* [2003] KLR 125.
12. The Plaintiff, through director’s affidavits, claims that the Defendant unlawfully continues to interfere with the company’s business operations and client relationships, despite having resigned as a director in January 2022. The Plaintiff asserts that the Defendant’s actions are detrimental to the company’s interests and unlawful. The Defendant counters this by claiming that after his resignation, he was hired by the company’s majority shareholder and director to carry out duties as the Sales and Marketing Director. He denies any unlawful interference with the company’s operations.
13. From the record, it appears that the Defendant’s involvement in the company is grounded in an employment relationship, with pay slips for the period between February 2022 and June 2023 confirming he received a salary from the Plaintiff. This indicates that the Defendant was employed by the company in the capacity of Sales and Marketing Director. During this period, Tribhovan was the majority shareholder and director, holding 51 shares, as evidenced by the attached CR12 dated 7th July 2023.
14. A person acting within the scope of their employment or under the authority granted by a majority shareholder is not typically engaging in unlawful actions. Based on the evidence adduced by Defendant I am persuaded that Plaintiff has failed to demonstrate that the actions of the Defendant in the company were illegal, unlawful, or contrary to the scope of his employment. As Sales and Marketing Director, the Defendant’s role involved engaging with the company’s clients and managing the business.
15. The Plaintiff argues that Tribhovan is a majority shareholder, following his removal as a director at an extraordinary general meeting held on 15th September 2023. But the Defendant has adduced evidence to demonstrate that the removal of Tribhovan as a director of the Plaintiff was illegal and unlawful.
16. In establishing a prima facie case, the Plaintiff needs to demonstrate that the Defendant’s engagement in the company is detrimental to its interests. It is my considered view that since the Defendant has shown he was receiving a salary, acting as Sales and Marketing Director, and was employed with the consent of Tribhovan, the Plaintiff has failed to prove a prima facie case or unlawful interference.



17. A prima facie case having not been made out, I need not consider the other two conditions of irreparable injury and balance of convenience.
18. In considering the Plaintiff's request for a permanent injunction, it is important to recognize that such a remedy is an equitable one, designed to restrain a party from engaging in certain acts that may harm the rights or interests of the Plaintiff. It requires the court to fully hear the parties, determine the facts, and analyze the law surrounding the case before issuing the order.
19. The issuance of a permanent injunction, especially at an interlocutory stage, has the effect of finalizing the rights of the parties before the court. As such, the decision to issue such an injunction must be made with great caution, as it can effectively resolve the dispute in favour of one party without allowing the other to fully present their case. It is a fundamental principle of justice that both parties must be given a fair opportunity to argue their case and present their evidence before the court makes a final determination.
20. In the circumstances, I find that issuing a permanent injunction at this interlocutory stage would deprive the parties of a fair opportunity to present their case. Therefore, I find that the prayer for a permanent injunction must fail at this juncture, and the parties will be allowed to present their case.
21. Consequently, I find the Plaintiff has failed to persuade the court to grant the orders sought. The application dated April 29, 2024 is dismissed with costs.

RULING DELIVERED, DATED AND SIGNED AT NAIROBI THIS 13TH DAY OF FEBRUARY 2025.

P.M. MULWA

JUDGE

In the presence of:

Mr. Ogendo for Plaintiff/Applicant

Mr. Awuor for Defendant/Respondent

Court Assistant: Carlos

