



Torino Enterprises Limited & another v Boit & 6 others (Commercial Case 401 of 2011) [2025] KEHC 1016 (KLR) (Commercial and Tax) (4 March 2025) (Ruling)

Neutral citation: [2025] KEHC 1016 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE 401 OF 2011**

A MABEYA, J

MARCH 4, 2025

BETWEEN

TORINO ENTERPRISES LIMITED 1ST PLAINTIFF

ABENAQUI DEVELOPERS LIMITED 2ND PLAINTIFF

AND

KENNETH KIPTOO BOIT 1ST DEFENDANT

JAMES CHERUIYOT BOIT 2ND DEFENDANT

PATRICK KIBAGENDI OSERO 3RD DEFENDANT

FRED OREGO 4TH DEFENDANT

BERNARD KOYYOKO 5TH DEFENDANT

JULIET MUKAMI NDUNG’U 6TH DEFENDANT

REGISTRAR OF COMPANIES 7TH DEFENDANT

RULING

1. On 23/3/2023, the Court ruled that the parties should record a consent regarding the shareholding agreement within 14 days of the ruling, failing which the suit would stand dismissed for want of prosecution. When the matter was mentioned in Court, the 1st plaintiff claimed it had been excluded but later submitted an addendum via a letter dated 27/4/2023.
2. Ms. Ndonjo, holding brief for Mr. Amoko for the 1st to 3rd defendants, opposed the addendum and argued that the 1st plaintiff should file a bill of costs instead. The Court directed the parties to file the consent and addendum alongside submissions on the same.



3. The 1st plaintiff filed its submissions on 14/8/2024, but the other parties failed to do so.
4. The 1st plaintiff contended that the consent was filed without its involvement or that of its advocate, despite the issue at hand being shareholding. It argued that this amounted to a miscarriage of justice, as it infringed on its proprietary rights.
5. The record shows that while the parties had agreed to settle the shareholding dispute, the 2nd defendant had initially refused to sign the consent but later expressed willingness. The Court, therefore, granted additional time to finalize the agreement.
6. The 1st plaintiff's addendum proposed a 4% share allocation to Ahmednasir Abdullahi Advocates LLP, deducted from the shares of Cyrus Shakhalaga Khwa Jirongo (two shares) and one share each from Kenneth Boit and James Cheruiyot Kenneth. Additionally, it sought to include Patrick Kibaghendi Osero alongside Kenneth Kiptoo Boit and James Cheruiyot Kenneth.
7. The 1st to 3rd defendant objected to the addendum. Since all parties had already agreed on the shareholding structure without the proposed changes, the Court found that the addendum would unnecessarily complicate the matter.
8. The Court held that any disputes over legal fees should be resolved through a bill of costs. Accordingly, the parties were directed to file the consent on shareholding as initially agreed, without the addendum.
9. I have looked at the record. No agreement has been filed as directed. It must be noted that all these proceedings arose from a Notice to Show Cause why the suit should not be dismissed for want of prosecution. It had remained unprosecuted for 5 years. The Court cannot force and cajole the parties to execute a consent if they do not wish to do so. This Court's hands are tied to the order and directions given in the ruling of 23/3/2023.
10. Accordingly, the parties having failed to file the alleged consent signed by all the parties leaves this Court with no alternative but to fall back on the default order in the ruling of 23/3/2023 for it to take effect accordingly.

It is so ordered.

SIGNED AT KISUMU THIS 27TH DAY OF FEBRUARY, 2025.

A. MABEYA, FCI ARB

JUDGE

DATED AND DELIVERED AT NAIROBI THIS 4TH DAY OF MARCH, 2025.

F. GIKONYO

JUDGE

