



Bing & another v Shuitong (Commercial Miscellaneous Application E004 of 2025) [2025] KEHC 4717 (KLR) (10 April 2025) (Ruling)

Neutral citation: [2025] KEHC 4717 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
COMMERCIAL MISCELLANEOUS APPLICATION E004 OF 2025
DO CHEPKWONY, J
APRIL 10, 2025**

BETWEEN

CHEN BING 1ST PLAINTIFF

FUJIAN SHIXIN INVESTMENTS AND DEVELOPERS (K)

LIMITED 2ND PLAINTIFF

AND

CHEN SHUITONG DEFENDANT

RULING

1. On 8th April, 2025, the parties appeared before this Court for mention for purposes of taking directions on the manner in which the matter should proceed, given the pendency of two substantive applications and a Notice of Preliminary Objection.
2. Learned counsel, Mr. Mukuna, appearing for the Defendant, urged the Court to first consider and allow the Defendant’s application insofar as it seeks to set aside interim orders issued by this Court on 26th March 2025, on the grounds that the said orders were obtained through material non-disclosure and without due notification to the Defendant. Counsel contended that the Defendant was unaware of the proceedings that led to the issuance of the interim orders and as such, procedural fairness and the right to be heard were compromised.
3. In response, learned counsel Mr. Alinyo, appearing for the Plaintiffs, contended that the Defendant’s approach was irregular and unjustified. According to him, it was inappropriate to seek the setting aside of interim reliefs without first filing a substantive response to the Plaintiff’s application. Counsel argued that this action amounted to an attempt to circumvent the Court’s directions and review the interim orders “through the back door.” That, in any event, the learned counsel maintained that the Defendant had duly been served.



4. Having carefully considered the arguments advanced in the submissions of both counsel, I have read through and reviewed the pleadings so far filed herein, this Court notes the following salient issues:-
 - a. The 1st Plaintiff seeks leave to continue the present proceedings as a derivative suit, alleging that the Defendant has been unlawfully transferring properties owned by the nominal entity; Fujian Shixin Investments and Developers (K) Limited, into his own name.
 - b. The Court, upon being satisfied on a prima facie basis that the rights of the company were at risk of imminent infringement, granted interim injunctive orders on 26th March, 2025. It is important to point out these orders were aimed at preserving the substratum of the dispute pending the hearing and determination of the Plaintiffs' application.
 - c. However, the Defendant has now raised concern that the said orders were issued without full disclosure of material facts, and without proper notice to him.
5. However, in view of the issues raised and in the interests of fair hearing and expeditious resolution of the interim disputes, the Court finds that the orders issued on 26th March, 2025 are only provisional in nature and do not in any way amount to a final determination of the rights of the parties. At this stage, no final determination has been made on the rights or liabilities of any party.
6. The Court reiterates that both parties shall have a full and fair opportunity to canvass their respective positions, including responding to the applications and raising any relevant objections or defences. Therefore, the Court will then proceed to determine the matter on the basis of the evidence, affidavits, and submissions that will have been placed before it by either party.
7. Accordingly, to ensure an orderly and fair process, the Court issues the following directions:-
 - a. That the Plaintiffs' application dated 4th March, 2025, the Defendant's application seeking to set aside the interim orders, and the Defendant's Notice of Preliminary Objection dated 13th March, 2025, shall be heard together.
 - b. That each party is granted seven (7) days leave from the date hereof to file and serve any response to the opposing applications and preliminary objection.
 - c. The parties shall thereafter have a corresponding seven (7) days leave to file and serve any supplementary affidavits if necessary.
 - d. The applications and the Notice of Preliminary Objection shall be canvassed by way of written submissions. Each party shall file and serve its written submissions within fourteen (14) days of filing the responses.
 - e. This matter shall be mentioned on 24th April, 2025 for parties to confirm compliance and take a ruling date.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 10TH DAY OF APRIL, 2025.

D. O. CHEPKWONY

JUDGE

In the presence of:

Mr. Mukuna counsel for the Defendant/Respondent



Mr. Alengo counsel for the Plaintiff

Court Assistant - Martin

