



REPUBLIC OF KENYA



**Chavda v Patel & 3 others (Civil Suit E108 of 2024)
[2025] KEHC 4670 (KLR) (Commercial and Tax) (10 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4670 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL SUIT E108 OF 2024
PM MULWA, J
APRIL 10, 2025**

BETWEEN

TRIBHOVAN LALJI CHAVDA PLAINTIFF

AND

VIRJI MEGHJI PATEL 1ST DEFENDANT

PURSHOTTAM PREMJI VERA 2ND DEFENDANT

COMMODORE PROPERTIES LTD 3RD DEFENDANT

THE REGISTRAR OF COMPANIES 4TH DEFENDANT

RULING

1. This ruling relates to a Notice of Motion brought under Sections 139, 256, 257, 262, and 278 of the *Companies Act*, 2015, Order 51 Rule 1 of the Civil Procedure Rules, and Sections 1A, 1B, and 3A of the *Civil Procedure Act*. The Applicant, Tribhovan Lalji Chavda, seeks injunctive and status quo orders restraining his removal as Director of Commodore Properties Limited and the convening of an Extraordinary General Meeting (EGM), pending hearing and determination of both this application and the main suit.
2. The application is premised on the grounds set out on the face of the record and is supported by the affidavits of Mr. Tribhovan Lalji Chavda, sworn on 5th March 2024 and 18th October 2024. The Applicant avers that he is the majority shareholder of Commodore Properties Limited, holding 38 shares, while the 1st and 2nd Respondents hold 37 and 25 shares respectively. He contends that a Board of Directors meeting was convened on 8th February 2024 without proper notice, consultation, or legal justification, with the sole intention of effecting his removal as a director. Despite his written objection dated 7th February 2024, the meeting proceeded in his absence. He further alleges that non-directors



participated in the said meeting, which culminated in a resolution to convene an Extraordinary General Meeting for purposes of his removal from office.

3. In opposition to the application, the 1st, 2nd and 3rd Respondents each filed replying affidavits sworn on 16th July 2024. Their respective averments are substantially similar. They assert that due and sufficient notice was issued to all directors, including the Applicant, for the Board meeting scheduled on 8th February 2024, which the Applicant failed to attend. The Respondents maintain that the said meeting was convened as an extraordinary meeting for purposes of considering the Applicant's removal as a director on grounds of breach of fiduciary duty. They contend that the meeting validly resolved to remove the Applicant and that a 28-day notice was subsequently issued to shareholders calling for an Extraordinary General Meeting in accordance with the law. The Respondents urge the Court to find the application devoid of merit and to dismiss it with costs.
4. The application was canvassed by way of written submissions. The Plaintiff filed submissions dated 18th October 2024, while the 1st, 2nd and 3rd Defendants filed their submissions dated 21st January 2025. I have duly considered the respective submissions, together with the application, the supporting and opposing affidavits and the annexures thereto.
5. From the pleadings and submissions, the following issues arise for determination:
 - i. Whether the Applicant has satisfied the conditions for the grant of a temporary injunction;
 - ii. Whether the process leading to the Applicant's removal as a director was lawful;
 - iii. Whether status quo orders ought to be granted pending the hearing and determination of the main suit.
6. On the first issue, the principles governing the grant of temporary injunctions were laid down in *Giella v Cassman Brown & Co Ltd* [1973] EA 358, and reiterated in *Nguruman Limited v Jan Bonde Nielsen & 2 others* [2014] eKLR, as follows:

“In an interlocutory injunction application, the applicant has to satisfy the triple requirements to;

- (a) establish his case only at a prima facie level,
- (b) demonstrate irreparable injury if a temporary injunction is not granted, and
- (c) allay any doubts as to (b) by showing that the balance of convenience is in his favour.”

7. It is established that all the above three conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially. In the absence of a prima facie case, the Court need not proceed to consider the other principles relating to irreparable harm and balance of convenience. This sequential approach to the consideration of evidence in interlocutory applications was authoritatively articulated by the Court of Appeal in the case of *Nguruman Case* (Supra) where the court held:

“In an interlocutory injunction application, the Applicant has to satisfy the triple requirements to: establish a prima facie case with a probability of success; demonstrate that he, she or it stands to suffer irreparable harm in the absence of injunctive relief; and show that the balance of convenience tilts in his, her or its favour. If a prima facie case is not established, then irreparable injury and balance of convenience need no consideration.”



8. The proper approach to the evaluation of evidence in applications of this nature was further articulated by the Court of Appeal in *Mbuthia v Jimba Credit Finance Corporation & Another* [1988] eKLR, where the Court observed:

“The correct approach in dealing with an application for the injunction is not to decide the issues of fact, but rather to weigh up the relevant strength of each side’s propositions. There is no doubt in my mind that the learned Judge went far beyond his proper duties, and has made final findings of fact on disputed affidavits.”

9. This authority underscores the principle that, at the interlocutory stage, the Court must refrain from making definitive findings on contested matters of fact, and instead focus on whether the Applicant has made out a case warranting the preservation of rights pending trial.

10. It must also be emphasized that establishing a prima facie case is not, in itself, sufficient to warrant the grant of an interlocutory injunction. The Court must further be satisfied that the Applicant stands to suffer irreparable harm that cannot be adequately compensated by an award of damages, should the injunction be withheld.

The Court of Appeal in *Mrao Ltd v First American Bank of Kenya Ltd & 2 Others* [2003] KLR 125 defined a prima facie case in the following terms:

“A Prima facie case in a civil application includes but not confined to a genuine and arguable case. It is a case which on the material presented to the court, a tribunal properly directing itself will conclude there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the later.”

11. The Applicant contends that his removal was orchestrated in contravention of due process, citing the lack of proper notice, consultation and adherence to procedural safeguards. He asserts that his rights as both a director and majority shareholder were infringed. Additionally, the Applicant challenges the validity of the resolutions passed at the impugned meeting, arguing that the participation of non-directors rendered the proceedings defective and contrary to Sections 138 and 139 of the *Companies Act*, 2015. These provisions vest the management of a company in the Board of Directors and prescribe the procedure for the lawful removal of a director.

12. Section 139 of the *Companies Act* deals with the Resolution to remove directors from office. The section provides that:

1. A company may, by ordinary resolution at a meeting, remove a director before the end of the director’s period of office, despite anything to the contrary in any agreement between the company and the director.
2. However, a special notice is required for a resolution to remove a director under this section or to appoint a person to replace the director so removed at the meeting at which the director is removed.

13. Further, Section 141 thereof provides for the Director’s right to protest against removal, as follows:

1. On receipt of notice of a motion for a resolution to remove a director under section 139, the company shall send a copy of the notice to the director concerned.
2. The director, whether or not a member of the company may be heard on the discussion of the motion at the meeting.



14. From the material on record, it is evident that the Company lawfully and procedurally convened a meeting of the Board of Directors scheduled for 8th February 2024, pursuant to a notice dated 6th February 2024. The minutes of the said meeting indicate that its primary purpose was to resolve to convene an Extraordinary General Meeting.
15. Pursuant thereto, a notice dated 8th February 2024 was issued, calling for the Extraordinary General Meeting. The notice expressly stated that the purpose of the meeting was to consider and resolve the removal of Mr. Tribhovan Lalji Chavda from his position as a Director of the Company. On the same date, the Company further communicated to the Applicant, by way of a letter, the intention to remove him from office. The letter set out the grounds for removal, citing breach of fiduciary duty. The alleged breach was particularized as the misappropriation of company funds for personal use and the undertaking of clandestine financial transactions on behalf of the Company without the knowledge or consent of the other Directors.
16. It is further evident from the record that the Applicant was duly served with both the notice of the Board meeting and the notice calling for the Extraordinary General Meeting. Despite such service, the Applicant failed to attend the meetings in question.
17. While the Applicant challenges the legality of the said meeting and raises concerns regarding the alleged participation of persons who were not directors of the Company, there is, at this stage, no prima facie evidence to suggest that the Applicant was denied his statutory rights as provided under Sections 139 and 141 of the *Companies Act*. I am of the view that the issue of involvement of unauthorized individuals is a factual controversy that is more appropriately addressed at the substantive hearing. As such, it does not constitute a clear prima facie case justifying the grant of interim relief at this interlocutory stage.
18. As previously stated in this ruling, in the absence of a prima facie case, it becomes unnecessary to delve into the remaining limbs traditionally considered in the grant of injunctive relief. Nevertheless, for completeness, I shall briefly address the issue of irreparable harm. The Applicant's claimed injury pertains to the potential loss of his position as a director and the attendant influence such office confers. However, I am alive to the fact that the *Companies Act* provides mechanisms through which a wrongfully removed director may seek redress or reinstatement. Accordingly, the harm alleged is not of an irreparable nature, as it is capable of being remedied through legal or equitable relief.
19. The final issue concerns the balance of convenience. The Applicant is indeed a majority shareholder, holding 38 shares against other shareholders holding 37 and 25 shares, respectively. However, this majority shareholding does not bar the Company or its shareholders from exercising their statutory right to seek the removal of a director in accordance with Section 139 of the *Companies Act*. The statutory process having been invoked, restraining its progression at this stage may result in prejudice to the Respondents who are exercising a right conferred by law.
20. Given the foregoing, I find that the balance of convenience does not tilt in favour of the Applicant, and thus does not support the grant of an injunction.
21. On the matter of status quo, while a temporary injunction is not warranted, I am persuaded that an order preserving the status quo is necessary to safeguard the substratum of the suit. The most recent CR 12 dated 7th February 2024, indicates that Mr. Tribhovan Lalji Chavda is a director of the Company and holds 38 shares. It is a settled principle that the purpose of an interim order is to preserve the subject matter of the suit until the issues in dispute are conclusively determined (See *Noormohamed Jan Mohamed v Kassamali Virji Madhani* [1953] 20 EACA 8).



22. In the result, I am inclined to grant an order preserving the status quo. Accordingly, an order is hereby issued maintaining the current directorship structure of Commodore Properties Limited and restraining any further steps toward the removal of the Applicant as director, pending the hearing and final determination of the main suit.

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

PETER M. MULWA

JUDGE

In the presence of:

Mr. Awuor for Plaintiff/applicant

Mr. Ogendo for Defendants/respondents

Court Assistant: Kadzo

