



**Ravasio v Kriplani & 5 others (Commercial Petition E008 of 2020)  
[2025] KEHC 4352 (KLR) (Commercial and Tax) (3 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4352 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL PETITION E008 OF 2020**

**AA VISRAM, J**

**APRIL 3, 2025**

**BETWEEN**

**JOSEPH GIUSEPPE RAVASIO ..... PETITIONER**

**AND**

**NILESH DINGOO KRIPLANI ..... 1<sup>ST</sup> RESPONDENT**

**ALFRED FELIX CRASTA ..... 2<sup>ND</sup> RESPONDENT**

**AVIATION WAREHOUSE INTERNATIONAL LIMITED ..... 3<sup>RD</sup> RESPONDENT**

**HECTOR ROBERT DINZ ..... 4<sup>TH</sup> RESPONDENT**

**RAMESH RAICHAND PREMCHAND MEPA SHAH ..... 5<sup>TH</sup> RESPONDENT**

**AND**

**AFKO LUCK INVESTMENTS LIMITED ..... NOMINAL RESPONDENT**

**RULING**

**Introduction and Background**

1. Before the Court for determination is the Petitioner's Notice of Motion dated 27<sup>th</sup> September, 2024, made under the provisions of Order 51, rule 1 and Order 41 of the Civil Procedure Rules, 2010, Section 1A, 1B, 3A and 63(e) of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) and Section 780 and 782 of the *Companies Act* (Chapter 486 of the Laws of Kenya) seeking the following orders:-
  1. Spent\*
  2. That a mandatory Order be and is hereby issued directing the 1<sup>st</sup> to 5<sup>th</sup> Respondents, to within seven (7) days of service of the Order to furnish the Petitioner:-



- a. Bank Account Statements of all Bank Accounts of the Company-Afko Luck Investments Limited from June 2019 to September 2024;
  - b. A statement of account for all payments received under the Profit- Sharing Agreement dated 29<sup>th</sup> June 2019 from Yuan Fangwenjin & Wang Li Ping;
  - c. Copy of invitation for a Board Meeting that discussed and approved the Venice Casino issue aforesaid;
  - d. A Copy of the Resolution on the Venice Casino;
  - e. The Agreement(s), licence, lease and or all memoranda that permitted the Company premises and Licence by Venice Casino, including terms of payment thereon;
  - f. All records of payments by Venice Casino over the license aforesaid.
3. That the Honourable Court be pleased to appoint a Receiver Manager to manage the affairs of the Company Afko Luck Investments Limited, pending hearing determination of the Petition;
  4. That the costs of the Application be borne by the 1<sup>st</sup> to 5<sup>th</sup> Respondents.
2. The Application is premised on grounds set out on its face and the supporting affidavit of Addisalem Belachew Demisse, the holder of a Power of Attorney from the Petitioner sworn on 27<sup>th</sup> September, 2024. It is opposed by the Respondents through the replying affidavit of the 1<sup>st</sup> Respondent sworn on 11<sup>th</sup> February, 2025, and the Grounds of Opposition dated 17<sup>th</sup> February, 2025. The Application was canvassed by way of written submissions which are on record.
  3. The relevant background and facts giving rise to the present Application include the following:- The Petitioner and the 1<sup>st</sup> - 5<sup>th</sup> Respondents are directors and shareholders in the 6<sup>th</sup> Nominal Respondent (“the Company”). It is evident that the Company has been experiencing internal management and operational problems which led to the Petitioner filing a petition together with an application dated 18<sup>th</sup> September, 2020, made inter alia under Section 780 and 782 of the *Companies Act* (Chapter 486 of the Laws of Kenya).
  4. The Petitioner claimed that he was being treated in an unfair and oppressive manner by the Respondents and thus sought orders for the production of statement of accounts, an injunction restraining the Respondents from accessing the Company premises, the appointment of an independent inspector to conduct a review and forensic audit of the Company’s operations, and that the independent inspector also appoints valuers to conduct a valuation of the Company.
  5. The court heard the application on 18<sup>th</sup> September, 2020, and issued a ruling dated 17<sup>th</sup> April, 2020 (“the Ruling”) in respect of the same, in which it determined whether the Petitioner had made out a case for granting the orders sought in the application.
  6. In the Ruling, the court held that the Petitioner did not present any material before the court to support his claim that the Respondents had acted ultra vires or that their actions bordered on fraud. The court also held that the matters complained of were internal issues to be resolved by the members of the Company. The application was dismissed.
  7. When the substantive Petition came up for directions, the Court referred the parties to the court-annexed mediation process which led to a Mediation Agreement dated 12<sup>th</sup> August, 2024, where the parties agreed as follows: -
    1. The Parties agree to sell Afko Luck (Company) as a going concern its entirety.



2. The sale shall be Investments Limited the executed at the best possible market value and payment terms as agreed by the Parties.
  3. The Parties are at liberty to source for the buyer individually or through their agents within a period of Forty-Five (45) days from the date of this agreement in accordance with the terms laid down by the Parties.
  4. In the event the sale does not occur within Forty-Five (45) days, this Agreement stand expired, and the dispute shall stand referred back to the High Court (HCOMM E008 of 2020) for final determination.
8. The Petitioner now contends that the 45 days agreed on to sell the Company expired on 25<sup>th</sup> September, 2024, without any resolution, with the consequence that the Mediation Agreement expired, and the dispute now stands referred to the Court for determination of the Petition. Further, it submitted that the Respondents continue to be in serious breach of the fiduciary duties as directors of the Company; continue to manage the Company in contravention of the Law, and Articles of Association of the Company; and may dissipate its assets.

### **Analysis and Determination**

9. At the hearing of the present Application, the Court inquired of the Applicant what its view was concerning the import of the Ruling issued by Okwany, J? In particular, the Court inquired whether or not her Ladyship had granted the Applicant leave to commence or continue a derivative suit? The Applicant responded in the negative, and admitted that no such leave had been granted.
10. It is apparent that the present Application is grounded on Sections 780 and 782 of the *Companies Act* and seeks, in essence, the same relief which is the subject of the Ruling. Looking at the Ruling, it is also evident that the same was dismissed after a consideration of the merits.
11. I draw the parties' attention to paragraph 12 of the Ruling which states as follows: -

“My finding is that for the Applicant to enjoy the release provided for in section 780 of the *Companies act*, he needed to demonstrate that the 6<sup>th</sup> Respondent's conduct of the affairs of the 6<sup>th</sup> Respondent in a manner that is oppressive and unfairly prejudicial to his affairs. I however note that the Applicant did not present any material before this court to support his claim. I am not satisfied that the matters complained of our ultra vires order or borer on fraud but are such that they can be resolved by the company itself.” (emphasis mine)
12. The court therefore made a finding that the subject matter of the Application is internal and ought to be resolved by the Company. The finding of the court carries with it the consequence that the present Court may not depart from the finding of a court of concurrent jurisdiction in respect of the same subject matter. The issues are res judicata.
13. As regards the additional prayer seeking the appointment of a receiver manager, I find that insufficient evidence was laid before this Court in respect of the same. The prayer was grounded under Order 41, rule 1 of the Civil Procedure Rules, which relates to property, and is therefore not the applicable rule or procedure for such an appointment.
14. Further to the above, upon inquiry from this Court, Counsel was unable to explain why he had moved the Court under the said rule. Therefore, beyond merely stating the prayer on the face of the Application, the Applicant did not lay a sufficient basis for the grant of the relief sought. The prayer is accordingly without merit and is dismissed.



15. In conclusion, with the exception of the prayer seeking appointment of a receiver, which I have dismissed, I find that the Application dated 27<sup>th</sup> September, 2024 is res judicata, the issues having been determined by the Ruling as stated above.

16. Based on the reasons set out above, I find and hold that the Application is res judicata. The same is struck out with costs.

**DATED AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS THIS 3<sup>RD</sup> DAY OF APRIL, 2025**

**ALEEM VISRAM, FCIArb**

**JUDGE**

In the presence of;

.....Court Assistant  
..... Petitioner  
.....1<sup>st</sup> Respondent  
.....2<sup>nd</sup> Respondent  
.....3<sup>rd</sup> Respondent  
.....4<sup>th</sup> Respondent  
.....5<sup>th</sup> Respondent  
.....6<sup>th</sup> Respondent

