



REPUBLIC OF KENYA



**Pillai v Padmanabhan & 5 others (Commercial Suit E250 of 2024)
[2025] KEHC 5788 (KLR) (Commercial and Tax) (8 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 5788 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL SUIT E250 OF 2024**

PM MULWA, J

MAY 8, 2025

BETWEEN

NIJI KRISHNANKUTTY PILLAI APPLICANT

AND

SUBRAMANIAM PADMANABHAN 1ST RESPONDENT

DEEPAK SESADRI 2ND RESPONDENT

ANITHA SUBRAMANIAM 3RD RESPONDENT

FERDINARD MUCHOMBA 4TH RESPONDENT

ROBERT MUTHAMA 5TH RESPONDENT

REGISTRAR OF COMPANIES 6TH RESPONDENT

JUDGMENT

1. By an Originating Summons application dated 7th May 2024, the Applicant sought the following orders:
 - i. Spent
 - ii. Spent
 - iii. That time be extended, and the Plaintiff be granted leave to file suit against the Defendant for fraudulent transfer of the Plaintiff's share, resignation from directorship and forgery in Magnum Ventures Limited within 14 days.
 - iv. That pending the hearing and determination of the intended suit, the Honourable Court be pleased to issue an injunction preventing the Defendants, agents or person acting under



them from transferring shares in Magnum Ventures Limited, changing the company records of Magnum Venture, or winding up Magnum Ventures Limited

- v. That costs be provided for.
2. The application is supported by the Applicant's affidavit and grounds on its face, wherein the Applicant avers that he, together with Subramaniam and Jaya Krishna, incorporated Magnum Ventures Ltd in 2008 with a nominal capital of Kshs. 100,000 divided into 1,000 ordinary shares. The Applicant held 100 shares, while the co-founders held 450 shares each. He asserts that following the resignation of Jaya Krishna on 26th October 2012 and transfer of his shares to Subramaniam, he remained actively involved in the Company until 2017. However, he claims to have discovered in March 2023 that a meeting held on 23rd March 2015 purportedly recorded his resignation and share transfer, although he had not been notified of the meeting and denies consenting to either event. He further alleges forgery of his signature and fraudulent alteration of company records, which he claims only came to his attention in 2023.
3. The application is opposed by the Respondents through respective affidavits and the 1st – 3rd Respondents grounds of opposition dated 29th July 2024. Subramaniam, the 1st Respondent, in his replying affidavit sworn on 31st January 2025, contends that the Application is incompetent, time-barred, and brought in bad faith, asserting that the Applicant exited the company over a decade ago, engaged in competing ventures, misused company assets, and has now resorted to reviving stale claims based on forged documents, while approaching the Court with unclean hands..
4. The 5th Respondent, Robert Mailu Muthama, in his replying affidavit sworn on 18th February 2025, denies knowledge of the alleged share transfer and asserts that his professional stamp was affixed to the documents without his authorization.
5. The matter was heard by way of written submissions. The Applicant filed submissions dated 18th November 2024, while the Respondents filed theirs on 31st January 2025.
6. The Court is tasked with determining the following issues:
 - a. Whether the Applicant has demonstrated sufficient grounds to warrant extension of time to file a suit outside the statutory limitation period.
 - b. Whether the Applicant has satisfied the conditions for the grant of a temporary injunction pending the hearing and determination of the intended suit.
7. Section 26 of the *Limitation of Actions Act*, Cap 22 provides as follows:

“Where, in the case of an action for which a period of limitation is prescribed, either— (a) the action is based upon the fraud of the defendant; or (b) the right of action is concealed by the fraud of such person... the period of limitation shall not begin to run until the plaintiff has discovered the fraud or the mistake or could with reasonable diligence have discovered it.”
8. The guiding principle here is whether the Applicant has demonstrated that the delay in bringing the action was due to fraud that could not have been discovered with reasonable diligence, and whether he acted promptly upon discovering the fraud.
9. The Applicant claims to have discovered the fraud in March 2023 when he became aware of a purported resignation and share transfer, which he alleges were recorded in a meeting held on 23rd March 2015, a meeting to which he was not invited and of which he had no knowledge. He denies having resigned or consenting to the share transfer and alleges forgery of his signature.



10. The Court notes that fraud, by its very nature, may be concealed from the aggrieved party, and Section 26 of the *Limitation of Actions Act* is designed to protect parties who, due to fraud, are unaware of the cause of action until the fraud is discovered. In *Benjamin Wachira Wanjau v Elijah Wachira Wanjau & Another* [2016] eKLR, the Court emphasized that Section 26 ensures that parties who are victims of fraud are not unjustly precluded from seeking redress due to the limitation period, especially when the fraud was concealed.
11. The Respondents argue that the Applicant exited the company over a decade ago and has approached the court with unclean hands. However, the 5th Respondent, an Advocate whose stamp appears on the disputed transfer documents, expressly denies witnessing the share transfers and alleges forgery of his professional stamp. This, on its face, substantiates the Applicant's claim of fraud and triggers the application of Section 26.
12. At this interlocutory stage, the Court is not required to make definitive findings on the veracity of the parties' allegations, but rather to assess whether a prima facie case has been made to warrant the exercise of the Court's discretion in extending time.
13. Upon careful consideration, I am persuaded that the Applicant has offered a reasonable and credible explanation for the delay in instituting the proceedings. In particular, the Applicant's contention that the cause of action only crystallized upon recent discovery of the alleged fraud appears plausible and merits inquiry at the trial. Moreover, the Applicant has demonstrated promptitude in taking steps to bring the matter before the Court upon such discovery. I am therefore satisfied that the interests of justice would be served by allowing the application.
14. Guided by the principles enshrined in Section 26 of the *Limitation of Actions Act*, the Court is satisfied that the Applicant has established sufficient grounds to warrant an extension of time for the filing of the suit. The explanation offered for the delay is reasonable and excusable in the circumstances. In the interest of justice, and to afford the Applicant an opportunity to ventilate the dispute on its merits, the Court finds it just and equitable to grant leave to institute the suit out of time.

Whether an injunction relief can issue.

15. The Applicant further seeks interim injunctive relief to restrain the Respondents from transferring shares, altering company records, or undertaking any action towards the winding up of Magnum Ventures Limited pending the hearing and determination of the intended suit. The principles governing the grant of interlocutory injunctions are well settled, as articulated in *Giella v Cassman Brown & Co. Ltd* [1973] EA 358 and reaffirmed in *Nguruman Limited v Jan Bonde Nielsen & 2 Others* *CA No. 77 of 2012* [2014] eKLR. In the latter case, the Court of Appeal held that an applicant must satisfy a threefold test: (a) establish a prima facie case with a probability of success; (b) demonstrate that they will suffer irreparable harm if the injunction is not granted; and (c) where doubt exists, show that the balance of convenience tilts in their favour.
16. The test for a prima facie case was elucidated in *Mrao Ltd v First American Bank of Kenya Ltd & 2 Others* [2003] KLR 125, where the Court described it as a case that raises serious questions for trial and demonstrates that a right appears to have been infringed, necessitating a rebuttal or explanation from the opposing party.
17. In the present case, the Applicant contends that he was neither informed of nor consented to the alleged transfer of shares or his purported resignation as a director. The uncontroverted allegations of forgery and unauthorized alteration of company records, if established, point to possible fraudulent conduct. In the Court's view, these averments disclose a prima facie case warranting further judicial inquiry.



18. The Applicant has further demonstrated that unless injunctive relief is granted, he risks suffering irreparable harm through loss of proprietary and managerial interests in the company interests which may not be adequately compensated by an award of damages. An injunction is therefore necessary to preserve the substratum of the intended suit and to maintain the status quo pending determination on merit.
19. While the Respondents have raised issues of delay and alleged bad faith on the part of the Applicant, such contentions, though not entirely without merit, do not in themselves oust the Applicant's right to seek protection under the law in respect of serious allegations of fraud.
20. On the whole, the balance of convenience tilts in favour of preserving the current state of affairs. Preventing any further alteration of the company's structure or affairs during the pendency of the intended suit is in the interest of justice and serves to protect the Applicant's arguable claims.
21. In the result, the Court hereby allows the Chamber Summons application dated 7th May 2024 and issues the following orders:
 - i. Leave be and is hereby granted to the Applicant to file suit against the Respondents within fourteen (14) days from the date hereof.
 - ii. That pending the filing of the intended suit, an interim injunction is hereby issued restraining the Respondents, their agents, or any persons acting under their authority from transferring shares, changing company records, or winding up Magnum Ventures Limited.
 - iii. Costs of this application shall abide by the outcome of the intended suit.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 8TH DAY OF MAY 2025.

PETER M. MULWA

JUDGE

