



Medina Corporation Company Limited v Meridian Properties Limited & another (Commercial Case 183 of 2014) [2025] KEHC 8725 (KLR) (Commercial and Tax) (13 June 2025) (Judgment)

Neutral citation: [2025] KEHC 8725 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE 183 OF 2014
JWW MONG'ARE, J
JUNE 13, 2025**

BETWEEN

MEDINA CORPORATION COMPANY LIMITED PLAINTIFF

AND

MERIDIAN PROPERTIES LIMITED 1ST DEFENDANT

MERIDIAN HOLDINGS LIMITED 2ND DEFENDANT

JUDGMENT

Introduction and Background

1. This matter has a chequered history and according to the Plaintiff (“Medina”) dates back to 1984 when it went into business with the 1st Defendant (“Meridian Properties”) where it subscribed 20,000 of the 2nd Plaintiff’s (Meridian Holdings”) shares representing 20% of its nominal capital whereas Meridian Properties held the balance of 80,000 shares representing 80% of the nominal capital. Medina states that in 1993, it engaged in discussions with Meridian Properties for the purchase and transfer of its shares in Meridian Holding and by an agreement dated 10th September 1993, Medina accepted an offer to sell its shares for Kshs. 3.1 million.
2. However, Medina claims that this agreement was entered to by mistake and misrepresentations by Meridian Properties as the said offer was based on an erroneous and fraudulent claim of a valuation done by the Meridian Properties in which it represented the value of Meridian Holding’s only asset, Meridian Court Hotel, (“the Hotel”) as Kshs. 53 million. Further, that Medina was informed that the offer would only last during the pendency of the parties’ negotiation meeting and as such, it was not allowed to conduct its own diligence before accepting the offer. Consequently, that a draft handwritten contract was prepared and Medina, through its representative, executed the said agreement dated 10th September 1993 pending drafting of a formal agreement.



3. Medina, suspicious of the valuation conducted by Meridian Properties, caused an independent valuation to be done on the Hotel where it was established that the Hotel had been grossly undervalued by Meridian Properties as the value was approximately between Kshs. 155 million to 160 million. Medina informed Meridian Properties of its findings and made a counter offer of Kshs. 17 million, an amount it states, represented the actual, true, fair and reasonable value of the 20% stake. That Meridian Properties refused to engage in further discussions with Medina and hence the discussions broke down. Medina claims that no formal agreement to sell its share capital was drafted or executed by it and as such, it continued to be the 20% shareholder in Meridian Holdings while Meridian Properties retained the 80%.
4. Consequently, Medina instituted this suit (formerly HCCC No. 757 of 1994), seeking to have the price for its shares in Meridian Holdings provided in the disputed agreement dated 10th September 1993 rectified to embody the true and fair price of said shares or alternatively, a declaration that Medina rescinds the agreement. That due to the lapse of time, the prayer for rectification would no longer be effective and thus Medina seeks the alternative prayer for rescission of contract. Medina further avers that on diverse dates between the years 1993 - 2000, Meridian Properties, in breach of Meridian Holding's Articles of Association which provides for pre-emptive rights to existing shareholders caused its shares to be transferred to the individual members of the Kurji Family, Namely; Shamsherali Kurji, Akbar Kurji, Sadrudin Kurji And Zaherali Kurji, whose interest in Meridian Properties had been previously catered for. Medina states that this irregular transfer denied Meridian Properties its right to have no shareholder meeting take place in its absence as the number of shares had increased to more than 2 shareholders. That all the while, Medina remained in possession of the 20,000 shares out of the 100,000 shares of Meridian Holdings, with a valuation of Kshs. 400,000.00 against an issued and paid-up share capital of Kshs. 2 million.
5. Medina claims that, in 1993, Meridian Properties unilaterally and without consultation with Medina, resolved to increase the share capital from Kshs. 2 million to Kshs. 6 million and that which increase was intended to dilute Medina's hold in Meridian Holdings, as Medina could not bid on the shares. That in 2006, Meridian Holdings sought to increase its share capital from Kshs. 6 million to Kshs. 10 million partly by way of rights issue subject to the Court's advice and accompanied by the resolution to increase the share capital was a request to Medina to subscribe to its portion of shares by paying a sum of Kshs.800,000.00. Medina states that it agreed to do so and forwarded a banker's cheque of Kshs. 800,000.00 but the cheque was however returned with a letter dated 8th August 2006 noting that Medina's shares would be held in abeyance due to the pending suit herein and receipt of some information from Meridian Properties.
6. Medina consequently filed suit HCCC No. 603 of 2006 claiming that Meridian Properties in collusion with Meridian Holding's Company Secretaries had failed to issue Medina with a notice of the said intended increase of the share capital. In the suit, Medina sought to challenge what it claimed was the unlawful and unprocedural increase and issuance of the increased share capital of Meridian Holdings by Meridian Properties. That in further attempts to dilute Medina's share capital, Meridian Properties through its Company Secretaries sent a notice to Medina of an Extraordinary General Meeting (EGM) scheduled for 30th July 2013 whose agenda was, "To discuss the serious financial and business position of the Company and how to resolve it." That the Notice of the meeting was however sent late and consequently, Medina received the notice after the EGM had taken place and Medina later received a letter from Meridian Holding's Company Secretaries, which letter was mysteriously withdrawn and Medina found out that the new resolution to increase the share capital from Kshs. 9.2 million to Kshs. 49.2 million, was allegedly authorized by the EGM held 30th July 2013.



7. Medina states that it was not invited to bid for his rightful portion of the increased share capital and that Meridian Holding's Company Secretaries further proceeded to declare a diluted interest by Medina in the said company's shares, and to again state that the said shares would be held in abeyance pending court action. Vide a letter dated 4th April 2014 sent to the Plaintiff by Meridian Holding's Company Secretaries was informed that the share capital of the company had increased from Kshs. 9.2 million to Kshs. 49.2 million and that the letter purported to show that Medina Holdings held 126,957 shares in abeyance which Medina states is a misrepresentation. Medina maintains that it continued to hold a 20% interest in Medina Holdings and as such the shares held should be at a value of Kshs. 9.44 million and not Kshs. 1,739,140.00 that the Company Secretaries claimed.
8. Medina further states that it received a Notice dated 11th March 2014 of an EGM to be held on 4th April 2014 seeking to increase the authorized share capital of Meridian Holdings from Kshs. 50 million and not the Kshs. 49.2 million as previously mentioned, to Kshs. 100 million through a rights issue. Later, that Meridian Holdings, through its company secretaries sent a Notice dated 19th May 2014 to Medina claiming that it had increased its share capital from Kshs.47,460,860.00 to Kshs. 97,460,860.00 and that Medina's shares would be held in abeyance. Medina moved the court and, in a Ruling, delivered on 19th December, 2014, Meridian Holdings was restrained from effecting a rights and/or share issue, allocation, allotment and/or transfer and/or otherwise howsoever altering or registering any alteration in its share capital touching on Medina's 20% share entitlement pending the hearing and determination of the suit. Earlier, the court had in a ruling dated 6th February 2013 caused the consolidation of this suit and HCCC No. 603 of 2006 as the court noted that both suits revolved around Medina protecting its interests with regards to the shares it held in Medina Holdings.
9. In response to the allegations raised by Medina, the Defendants filed a Further Amended Defence and Counterclaim dated 16th April 2010 where it states that Medina's claim discloses no reasonable cause of action and is frivolous, vexatious and an abuse of court process and that there was no mistake with regard to the agreement for the sale of shares. The Defendants urge that the agreement was negotiated after exhaustive discussions with Medina's Chairman Mr. KHIMJI who is a banker and financier and a fully qualified and experienced businessman in the presence of Medina's then advocate, Mr. ORARO who himself reduced it into writing in his own hand where after Mr. ORARO read out aloud the said agreement which the parties then signed after stating that the agreement represented correctly what was agreed upon. That thereafter, the parties took steps to implement the agreement and discussions took place as regards the quantum of interest and the final net figure payable by the Defendants to Medina was agreed upon and which sum the Defendants tendered to Medina
10. The Defendants states that thereafter on 12th January 1994, Medina took a somersault and without any previous intimation suddenly contended for the first time that it had entered into the agreement under the mistake and that this is a specious excuse put forward by Medina with the view to wriggle out of its commitments under the agreement. Meridian Properties contends that its revenue reserve in 1990 was Kshs.4,416,506.00 and the capital reserve was Kshs.12,812,500.00 and that the revenue reserve increased to Kshs.4,757,002.00 in 1992 and to Kshs.6,305,978.00 in 1992. That all these facts were well known to Medina and were within its knowledge when it entered into the agreement and Medina refused to complete the agreement which action is a breach of the agreement.
11. The Defendants assert that Medina was not entitled to, and did not, rescind the agreement and that Meridian Properties did not make any representation to Medina as alleged, and that it did not induce Medina to do anything. It restates that the agreement was freely negotiated in the presence of the Medina's advocate and Meridian Properties denies that the value of the 20% shares in Meridian Holdings was Kshs. 17 m. It claims that Medina had previously attempted to sell its shares on at least



- three separate occasions but had failed to find a buyer and it asserts that Medina's Chairman, Mr. SULTAN KHIMJI who negotiated the agreement is an astute and experienced businessman and was at all material times fully aware of the financial position of the company and the value of its shares.
12. Meridian Properties denies availing itself to any legal advantage or that there is anything unconscionable in the agreement or its enforcement and it avers that it indeed sold its shareholding in Meridian Holdings after the contract between the Medina and Meridian Properties had been entered into. That at the time, it was still a shareholder and thus capable of buying the shares from Medina within the said Meridian Holdings and that Meridian Properties' subsequent sale of its shares in Meridian Holding neither frustrated nor rendered the contract it has entered into with Medina incapable of performance.
 13. The Defendants' counterclaim is for Medina's suit to be dismissed with costs; in addition, they further seek a declaration that Medina holds the 20,000 shares in Meridian Holdings as a trustee for Meridian Properties; an order directing Medina to execute a transfer of the said 20,000 shares in favour of Meridian Properties and in default Medina so doing within a stipulated time, the Deputy Registrar of this Court be directed to do so in lieu of Medina; An injunction be issued against Medina restraining it from dealing with the said 20,000 shares or exercising any voting rights in respect of the said shares otherwise than as directed by Meridian Properties and that; Medina be ordered to pay the costs of the counterclaim and interest thereon.
 14. When the matter set down for hearing, Medina presented two witnesses whereas the Defendants presented three. The Plaintiffs presented its director, Mr. SULTAN KASSAM KHIMJI(PW 1) who relied on his witness statement dated 1st July 2025 and produced Medina's List and Bundle of Documents of even date. It also presented ABDUL RAMADHAN (PW 2), who as an employee of Milligan & Company Valuers Ltd (now Milligan Valuers Ltd,) where he serves as a director (PW 2). On their part, the Defendants presented their director, AKBARAL KURIJI(DW 1) who relied on his witness statement dated 8th December 2025; SAMUEL MUTHEE MUREITHI, a Partner at Dieistch Riol Secretaries, Meridian Holdings' Company Secretaries (DW 2) who relied on his witness statement dated 9th December 2015 and; JUSTUS MUNENE MUNYI, a director of Daytons Valuers Ltd(DW 3) who relied on his witness statement 18th November 2022. The Defendants also produced the List and Bundle of Documents date 9th December 2025.
 15. At the close of the hearing, the court directed the parties to file written submissions which are on record and which I have carefully considered. Since the submissions and the evidence are a mirror of the parties' positions that I have summarized above, I will not rehash the same but I will make relevant references to them in my analysis and determination below.

Analysis and Determination

16. As these are civil proceedings, it should not be lost that the court's determination is on a balance of probabilities and is guided by the principle that he who alleges must prove. Denning J., in *Miller v Minister of Pensions* [1947]2 All ER 372 discussed the question of burden of proof and stated as follows:

“That degree is well settled. It must carry a reasonable degree of probability, but not so high as is required in a criminal case. If the evidence is such that the tribunal can say: ‘we think it more probable than not’, the burden is discharged, but, if the probabilities are equal, it is not. Thus, proof on a balance or preponderance of probabilities means a win, however narrow. A draw is not enough. So, in any case in which the tribunal cannot decide one way or the other which evidence to accept, where both parties' explanations are equally (un)



convincing, the party bearing the burden of proof will lose, because the requisite standard will not have been attained.”

17. The aforementioned position has now been espoused by our superior courts and finds statutory comfort in sections 107 and 108 of the *Evidence Act* (Chapter 80 of the Laws of Kenya) which provide as follows:

107. Burden of proof.

- (1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
- (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.

108. Incidence of burden.

The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

(Also see *Ignatius Makau Mutisya v Reuben Musyoki Muli* [2015] KECA 612 (KLR))

18. From the parties’ submissions, I find that the following are the abridged issues for the court’s determination:

- i. Whether Medina validly entered into an agreement with the Defendants to sell its shares in Medina Holdings;
- ii. Whether the Defendants offered a price based on a negligent or fraudulent misrepresentation of the true value of the business;
- iii. Whether, in the alternative, Medina entered into the agreement by mistake and whether it can rescind the agreement on the alleged grounds of mistake and undue influence and duress?;
- iv. Whether the additional changes to the shareholding structure was made in an irregular manner and whether the Defendants were permitted to increase Meridian Holding’s share capital?;
- v. Whether Meridian Properties has the capacity to enforce the draft agreement after transferring its shares;
- vi. Whether the Defendants wrongfully declined to allocate Medina its entitlement to a portion of the rights issues of the shares in Medina Holdings;
- vii. Whether Medina is entitled to the prayers sought in the Plaint;
- viii. Whether Medina holds the shares in trust for the Defendants;
- ix. Whether the counter claim discloses any cause of action;
- x. Who is to bear the costs of this suit and the counterclaim?

Whether Medina validly entered into an agreement with the Defendants to sell its shares in Medina Holdings

19. Medina submits that the draft agreement dated 10th September 1993 entered into by itself and Meridian Properties is invalid and that the consideration to be paid was executory in nature that is “a promise made in return for a counter promise”. It admits that it accepted an offer of Kshs. 3.1 million



from Meridian Properties in exchange of its shares in Meridian Holdings, however, before either parties could fulfill their consideration, Medina, suspicious of the aforementioned offer, caused a valuation to be done on Meridian Holdings and discovered that the value of the disputed shares was triple the amount offered by Meridian Properties. That on discovery of the actual value of Meridian Holdings, Medina rescinded its acceptance of Meridian Properties' offer.

20. In response, Meridian Properties state that PW 1 is an educated, astute business man, who was well-aware of all the details and information of Meridian Holdings, including its financial position. That PW 1, who is a Banker, had the benefit of legal representation and counsel, as well as the opportunity to speak with the Company Secretary and Auditors of Meridian Holdings, when negotiations were ongoing for the sale of the shares. That Medina was therefore well aware of the impact of the agreement, the value of the business and hence the value of the shares, and could not have been placed under duress and been unduly influenced to sign and accept the agreement in respect to the shares.
21. The Defendants also state that Medina attempted to rescind the agreement five (5) months after 10th September 1993, and hence cannot have made a mistake and that this is merely an after-thought to wriggle out of a deal, which, by its own doing, since it has borrowed loans and not repaid, was giving it less money than desired. The Defendants urge that the Valuation report produced by Medina has several shortcomings and is not concrete evidence on the value of the Hotel and more importantly, as evidenced by the written agreement, the value of the Hotel was not a condition or consideration of the agreement. That therefore, the value did not go to the root of the agreement, and hence mistake cannot vitiate the agreement.
22. The question of whether Medina entered into a valid agreement with Meridian Properties to sell its shares or whether the agreement was invalid for being entered into by mistake and misrepresentations is a matter of fact. It is not in dispute that for a contract to be valid, there has to be an offer, an acceptance of the offer, consideration and an intention by the parties to be bound by the agreement. In this case, Medina offered to sell its shares in Medina Holdings to Medina Properties and the latter accepted this offer. The shares were to be sold at a consideration of Kshs.3,100,000.00. I agree with Medina that a contract can be vitiated by factors such as mistake, fraud or misrepresentation. However, I agree with the Defendants that an agreement is vitiated if such an infraction goes to the root of the contract and that the burden of proving such a mistake, misrepresentation or fraud is vests upon the person who claims to have been wronged (see the judgment of J. W. Onyango Otieno JA., in LTI Kisii Safari Inns Ltd & 2 others v Deutsche Investitions-Und Entwicklungsgesellschaft ('Deg') & others [2011] KECA 1 (KLR))
23. PW 1 stated that he realized that he had entered into the agreement by mistake after finding out that the value that he was given of the Hotel was too low and that the actual value was much higher than what was represented to him by the Defendants. However, I find that Medina did not lead any evidence to demonstrate that it was the Defendants who misrepresented the value of PW 1's shares. He stated that there was a bid for the Hotel at the time whose value was placed at Kshs. 18.5 million and that in the negotiations preceding the agreement, he had an advocate present who advised him that he had the option of walking away from the negotiations. Whereas it appears that the negotiations were tense, they were not so much so as to state that PW 1 was forced to sign the agreement when he stated that he had the availability and access of independent advice and the option of walking out of the negotiations.
24. There is also the issue of the time that it took PW 1 and Medina to start protesting about the validity of the agreement. I am inclined to agree with the Defendants that it appears to be an afterthought that Medina would take 5 months from the date of signing the agreement on 10th September 1993 to suddenly "realize" that the shares had been undervalued. PW 1 admitted that he was always aware of the affairs of Meridian Holdings as he attended its AGMs where financial statements were presented



and that he never raised any reservations whatsoever. He also never objected to the company's audited accounts that were presented lending credence to the fact that he always aware of the financial position of Meridian Holdings and its valuation at the time. It is for these reasons that I find that on a balance of probabilities; there was never a mistake in Medina entering into the contract of 10th September 1993 of selling his shares to Meridian Properties. I further find that PW 1 and Medina were never misled as to the value of Meridian Holdings and that the former were always aware about the financial position of the company.

25. As PW 1 never protested when he signed the agreement and that his protest came five months later and since he had access to independent advice, and had the option of walking away from the negotiations, I find that there was no duress, undue influence or mistake when he signed the agreement to sell his shares on 10th September 1993. I therefore hold that Medina validly entered into an agreement with the Defendants to sell its shares in Medina Holdings. This finding also answers issues no. (ii) and (iii) above in the negative that the Defendants never offered a price based on a negligent or fraudulent misrepresentation of the true value of the business and that Medina did not enter into the agreement by mistake. It can therefore not rescind the agreement on the alleged grounds of mistake and undue influence and duress.

Whether the additional changes to the shareholding structure was made in an irregular manner and whether the Defendants were permitted to increase Meridian Holding's share capital

26. As Medina had ceded its shares to Meridian Properties through the agreement entered into on 10th September 1993, it follows therefore that Medina ceased being a member of the company and that it could not invoke its pre-emptive rights to bid on the shares when Meridian Properties sought to sell them. It cannot also complain that its shares were diluted when the company's share capital was increased as it no longer held any shares in Meridian Holdings. In any case, as it has not been disputed that Meridian Holdings' Articles of Association allows the increase of the share capital and since Medina had already sold its shares, it has no locus to complain about how Meridian Holdings increased its share capital. It is therefore my finding that the additional changes to the shareholding structure of Meridian Holdings was not made in an irregular manner and that the Defendants were permitted by the Articles of Association to increase Meridian Holdings' share capital.

Whether Meridian Properties has the capacity to enforce the draft agreement after transferring its shares

27. As I have already found that the agreement of 10th September 1993 of Medina transferring its shares to Meridian Properties is valid and binding, I find that the latter has the capacity to enforce that agreement. I am in further agreement with Meridian Properties that Medina holds those 20,000 shares in trust for the Defendants as a resulting trust was created by operation of law when Medina as the transferor never intended to confer a beneficial interest upon Medina Properties in as much as it had earlier agreed to transfer the shares (see *Gudka Westend Motors Limited v Industrial & Commercial Development Corporation* [2019] KEHC 9132 (KLR)).
28. My findings above dispose of Medina's suit and I find that it is not entitled to the prayers sought in it Further Amended Plaint dated 4th February 2010. The suit by the Plaintiff now stands dismissed. Turning to the counterclaim, I agree with the Defendants' submissions that since they have proved that their actions abide by the Company's Memorandum and Articles of Association and that the agreement dated 10th September 1993 is valid and binding, they are entitled to the prayers sought in the counterclaim dated 16th April 2010.



Conclusion and Disposition

- 29. For the above reasons, I now issue the following final orders:
 - 1. The Plaintiff's suit be and is hereby dismissed
 - 2. The Counterclaim by the Defendant against the Plaintiff is allowed; a declaration be and is hereby made that the Plaintiff holds 20,000 shares in Meridian Holdings Limited as a trustee for the Defendant, Meridian Properties Limited
 - 3. An order be and is hereby made directing the Plaintiff to execute a transfer of the said 20,000 shares in favour of the Defendant within 30 days of this judgment and in default of the Plaintiff so doing, the Deputy Registrar of this Court is directed to do so in lieu of the Plaintiff
 - 4. An injunction be and is hereby issued against the Plaintiff restraining it whether by itself, its directors, servants, agents or otherwise however from selling, alienating or dealing or encumbering the said 20,000 shares or exercising and voting rights in respect of the said shares otherwise than as directed by the Defendant
 - 5. The Plaintiff be and is hereby ordered to pay the costs of the counterclaim and the suit.

DATED SIGNED AND DELIVERED VIRTUALLY THIS 13TH DAY OF JUNE 2025

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J.W.W. MONGARE

JUDGE

In The Presence Of:-

Mr. Hezbon Ooko holding brief for Charles Kanjama SC for the Plaintiff.

Ms. Dave for the Defendant.

Amos- Court Assistant

