



**Twins Venture & Hardwareltd v Luthra & 2 others (Civil Case
E037 of 2024) [2025] KEHC 11812 (KLR) (Civ) (11 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 11812 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL CASE E037 OF 2024

SN MUTUKU, J

JUNE 11, 2025

BETWEEN

TWINS VENTURE & HARDWARELTD APPLICANT

AND

MRS SITARANI LUTHRA 1ST DEFENDANT

SATYANARAYIAN LUTHRA 2ND DEFENDANT

JOSEPH DB KIMANI T/A PYRAMID AUCTIONEERS 3RD DEFENDANT

RULING

The Notice of Motion

1. This ruling relates to the Notice of Motion dated 9th May 2025 [the Motion] filed by Mrs. Sitarani Luthra, Satyanarayian Luthra and Joseph D.B.K Kimani T/A Pyramid Auctioneers [the 1st, 2nd and 3rd Applicants]. It is brought under Sections 1A, 1B and 3A of the *Civil Procedure Act* [CPA] and Order 51, Rule 1 of the *Civil Procedure Rules* [CPR]. The Applicant seeks the following orders:
 - i. Spent.
 - ii. That the director of Immigration Services be directed to provide travel records regarding one Mansukh Jadvu Murji, the Plaintiff's director, specifically for the period between 1st January 2024 – 28th February 2024.
 - iii. That the information be provided to the Defendants' advocates, Mazaviru & Ketoo Advocates, to enable them file that information with the court.
 - iv. That the costs of the Application be provided for.



2. In support of the Motion, the Applicants have advanced the grounds found on the face of the Motion and in the Supporting Affidavit sworn by the 2nd Applicant that while Mansukh Jadva Murji [the director] purportedly sworn on 19th February 2024 verifying the averments made in the Plaint herein on behalf of Twins Venture & Hardware Ltd [hereafter the Respondent]. It is averred that the 2nd Applicant is aware that during the aforesaid period, the director was out of the country and could therefore not have possibly appeared before a Commissioner for Oaths, for purposes of swearing the verifying affidavit as well as preparing a witness statement in the matter.
3. The 2nd Applicant has averred that as per the advice given to him by the Applicants' advocate on record, the Director of Immigration is under a positive duty to provide information maintained by its office, upon the application of a person but that such information cannot be availed in the absence of a court order and that in the circumstances, it is imperative that the orders sought in the Motion be granted to enable the Applicants ascertain the competency of the pleadings on record.

The Replying Affidavit

4. To oppose the Motion, the Respondent filed a Replying Affidavit sworn by its advocate, Francis Mutua, on 13th May 2025 terming the Motion incurably defective for the reasons that it seeks orders against a person who is not a party to the suit proceedings and that it fails to disclose who constitutes the Applicant and Respondent respectively. The advocate has further termed the Motion as being premature since no formal request has firstly been made to the relevant office in respect of the information sought, adding that the orders sought in the instant Motion are open-ended.
5. It is further deposed that the Motion is purely a delay tactic and an attempt at impeding the expeditious disposal of the suit; that the issues arising in the Motion can easily be canvassed during the trial since the director, who will be testifying as a witness to the Respondent's case, can be subjected to cross-examination where necessary, regarding the said issues and that the Applicants do not stand to suffer any prejudice arising from any purported defect in the verifying affidavit.

Oral Submissions

6. The Motion was canvassed through oral submission. Mr. Masaviru, counsel for the Applicants, reiterated the grounds in support of the Motion and placed reliance on Article 35 of the [Constitution](#) which entitles a person to have access to information held by the State or by another person. He submitted that contrary to the averments set out in the Replying Affidavit, there is no legal requirement for enjoinder of the director in the present proceedings since no substantive claim is being pursued against him personally.
7. Counsel further submitted, while relying on Order 4[1] and Order 19[3] and [6] of the CPR, that the burden of proof lies with the director to prove that he was in the country at the time of purportedly swearing the verifying affidavit to the plaintiff, by availing the relevant supporting documentation such as a passport. He argued that the issues addressed in the Motion go to the core of the Respondent's pleadings and it is therefore imperative that the Motion be allowed as prayed.
8. Miss Mboya, advocate for the Respondent, relied on the Replying Affidavit challenging the Motion, and submitted that the Motion rides on assumptions and presumptions that the director was not in the country at the material time and that the Motion is based on a technicality. She submitted that the instant Motion has been brought late in the day, since the record will show that the matter was certified ready for hearing and was in fact slated for hearing when the Motion was filed; that the issues being raised presently ought to have been brought up at an earlier date and that the Motion has been brought mala fides and constitutes a mere afterthought.



9. Counsel further submitted that the Motion does not seek any specific orders or reliefs from the court as pertains to the Respondent's pleadings, such as an order striking out the suit and that in any event, the director has signed a witness statement, the contents of which have not been challenged by the Applicants herein.
10. In rejoinder, Mr. Masaviru has contended that no documentation has been placed before the court to ascertain that the director was in the country at the purported time of swearing the verifying affidavit; that the Motion is premised on facts rather than assumptions; that there is no existing law barring the filing of an application of such nature even at this stage of the proceedings and that the Motion is purely restricted to the issue of competency of the pleadings filed by the Respondent.

Analysis and Determination

11. I have considered the Motion and the grounds in support, the Replying Affidavits and the rival oral submissions. I have also read the records in the court file. The Respondent instituted the present suit against the Applicants vide a Plaint dated 22nd February 2024 accompanied by a Verifying Affidavit sworn by the director on 19th February 2024 and seeking reliefs in the nature of general damages, the sum of Kshs. 14,028,457/- plus costs of the suit and interest thereon, arising out of a claim for alleged negligence, unlawful termination of a lease agreement and levying distress for rent.
12. The Applicants, upon being served with the Summons and the Pleadings, entered appearance and filed a Statement of Defence accompanied by a Counterclaim dated 15th March 2024 to which the Respondent thereafter rejoined with a Reply to Defence and Defence to Counterclaim dated 2nd April 2024.
13. The record shows that the matter proceeded for pre-trial directions and upon confirmation of compliance by the parties, the matter was given a hearing date. However, before the hearing could kick off, the Applicants brought the instant Motion.
14. I understand the orders being sought being two-fold. These orders are interrelated, with the key order seeking to compel the Director of Immigration Services to provide travel records regarding the director, for the period between 1st January 2024 to 28th February 2024, followed by an order that the above records be provided to the Applicants herein for purposes of filing in court. I will address both prayers contemporaneously.
15. On the one part, the Applicants have purported in sum, that the director of the Respondent was not in the country at the time of swearing the Verifying Affidavit and hence the affidavit on record is incompetent and that no material has been tendered to ascertain that the said director was in fact present at the time of swearing the aforesaid affidavit before a Commissioner for Oaths.
16. In opposition, the Respondent has deemed the instant Motion as premature, an afterthought and unsubstantiated.
17. My reading of the Motion shows that the Applicants invoked Sections 1A, 1B and 3A of the CPA and Order 51, Rule 1 of the CPR. There is no specific provision cited which supports the orders sought. However, the Applicants' counsel, in his oral arguments, has referred, inter alia, to Order 4, Rule 1 of the CPR and Article 35 of the Constitution. Order 4, Rule 1 sets out the particulars to feature in a plaint, while Rule 2 provides that a plaint shall be accompanied by a verifying affidavit. It is not in dispute here that the plaint was accompanied by a verifying affidavit sworn by the director.
18. Article 35 of the Constitution provides that:



- [1] Every citizen has the right of access to—
- [a] information held by the State; and
 - [b] information held by another person and required for the exercise or protection of any right or fundamental freedom.

...

19. The right under Article 35 of the Constitution is not an absolute right as specified under Article 25 of the Constitution. It is subject to certain limitations where appropriate. This position was reaffirmed by the Court of Appeal in the case of Mtana Lewa v Kabindi Ngala Mwangandi [2015] KECA 532 [KLR] thus:

" ...

For the avoidance of doubt, the framers of the Constitution included a list of rights and freedoms which may not be limited notwithstanding any provisions of the Constitution. These absolute rights are set out in Article 25."

20. The key averment being relied on by the Applicants in purporting that the director was not in the country at the time of swearing the Verifying Affidavit is that the subject premises remained locked at all material times while the subject rent arrears remained unpaid. Upon consideration thereof, it is apparent that the aforesaid averment is speculative, in the absence of any credible supporting material.
21. It is my considered view that the issues being raised in the instant Motion can adequately be addressed during cross-examination of the director. I see no prejudice on the part of the Applicants in holding the above view because they will have a chance to raise the issues now being addressed in the Motion during the cross-examination of the director who has filed a witness statement.
22. It is therefore my considered view that no proper or reasonable basis has been laid to persuade this court to grant the orders sought to compel the Director of Immigration Services to provide the requested records. Consequently, the Notice of Motion dated 9th May 2025 is hereby dismissed for want of merit, with costs to the Plaintiff/Respondent.
23. It is so ordered.

DATED, SIGNED AND DELIVERED THIS 11TH JUNE 2025.

S. N. MUTUKU

JUDGE

