



REPUBLIC OF KENYA



**KENYA LAW**  
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**Wanganga & 2 others v Kimani (Civil Case E001 of 2025)  
[2025] KEHC 8360 (KLR) (13 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8360 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
CIVIL CASE E001 OF 2025  
JM NANG'EA, J  
JUNE 13, 2025**

**BETWEEN**

**DAVID M. WANGANGA ..... 1<sup>ST</sup> PLAINTIFF**

**BETHWELL NJOROGE KARANJA ..... 2<sup>ND</sup> PLAINTIFF**

**MARY MWIHAKI KAMAU ..... 3<sup>RD</sup> PLAINTIFF**

**AND**

**ELIZABETH WANJIKU KIMANI ..... DEFENDANT**

**RULING**

1. By a Notice of Motion dated 16<sup>th</sup> January 2025 the Plaintiffs (“the Applicants”) crave reliefs as hereunder:-
  1. Spent.
  2. Spent.
  3. Spent.
  4. That pending hearing and determination of this suit, a temporary injunction order do issue restraining the respondent by herself, her servants, agents, proxies, and/or persons exercising authority from them from convening a general meeting of Bahati Women Company Ltd scheduled for 18<sup>th</sup> January , 2025 and or calling for any such other meeting.(sic)
  5. That the Officer Commanding Division, Njoro Police Station to ensure compliance with the orders of the court.
  6. That the costs of the application be in the cause.



2. The application is supported by affidavit evidence of the 1<sup>st</sup> Plaintiff/ Applicant who avers that he has the authority of his co-Plaintiffs to swear the affidavit. The application is also based on other grounds set out on the body thereof. Upon considering the application that was brought under certificate of urgency, the court issued a temporary ex-parte injunction order restraining the Defendant (“the Respondent”) from convening the scheduled meeting on 18<sup>th</sup> January 2025 or on any other date, pending hearing of the application inter partes.
3. The Respondent opposes the application vide her affidavit in reply sworn on 22<sup>nd</sup> February 2025.
4. The 1<sup>st</sup> Plaintiff/ Applicant avers that Bahati Women Company Ltd (“the company”) was formed to acquire freehold, leasehold or other landed property as per its Memorandum and Articles of Association. He is a bonafide shareholder/director of the company together with his co-Plaintiffs and the Respondent. The Respondent is accused of unilaterally running the company resulting in numerous wrangles. It is contended that the Respondent fraudulently attempted to change the company’s directorship ostensibly because the Applicants had resigned, but the Registrar of Companies thwarted the attempt.
5. Among other directions, the Registrar is said to have required verification of legitimate members of the company before convention of an annual General Meeting (AGM) of the company. Without consulting them, the Respondent, however, convened a purported AGM on 11<sup>th</sup> January 2025 without participation of a duly appointed Certified Public Secretary and in violation of the Registrar’s directives. The meeting was allegedly marred with chaos and intimidation of members, causing adjournment to 18<sup>th</sup> January 2025 at the same venue, Gachebe Farm, Mau Narok, within Nakuru County. The Applicants feared that the scheduled meeting would also be chaotic as the venue is not neutral, being a stronghold of a faction allied to the Respondent. The Registrar of Companies didn’t respond to the Applicants’ concerns expressed through letters to that office, hence this application. According to the Applicants, there is need to postpone the AGM to enable adequate preparation, audit and presentation of financial accounts of the company and obviate prejudice to the Applicants.
6. The Respondent confirms in her reply that she is a director of the company and chair of its Board of Directors. She faults the Applicants for suing her in her personal capacity yet the company is a corporate entity capable of being sued in its name, and intimated intention to raise a preliminary point in this regard.
7. On the merits of the application, the Respondent contends that she is wrongly sued as an individual director when the decisions complained of were collectively made by the company’s Board of Directors. The Respondent laments that if the company is prohibited from statutory meetings like the AGM, this would run afoul of the law requiring holding of such meetings in the interests of members and could lead to dissolution of the company.
8. The Respondent further deposes that contrary to the Applicants’ claim, the AGM of 11<sup>th</sup> January 2025 was presided over by a certified Public Secretary known as Stella Nyamu duly appointed by a majority of the company’s Board of Directors in a meeting held on 9<sup>th</sup> January 2023. The Applicants are said to have attended the meeting of 11<sup>th</sup> January 2025 and even brought along their own certified Public Secretary named Sammy Kanger and an advocate called David Mong’eri to oversee proceedings on their behalf. Security for the meeting was provided by police officers led by the Deputy County Commissioner with jurisdiction in the area. It is the Respondent’s contention, therefore, that the Applicants actively took part in the meeting and no chaos was witnessed. Among exhibits annexed to the Respondent’s affidavit are photographs showing those who attended the meeting including the



- Applicants and security officers. According to the Respondent the 1<sup>st</sup> Plaintiff/Applicant carried with him the company's Members Register which he personally used to vet attendees at the meeting.
9. With concurrence of the Applicants, the meeting of 11<sup>th</sup> January 2025 was postponed to 18<sup>th</sup> January 2025 at the same venue after it failed to conclude on the first day, adds the Respondent. It was therefore surprising and dishonest when the Applicants brought this suit and application which the Respondent wants to be dismissed as an abuse of the court process.
  10. The Respondent did file a notice of preliminary objection dated 22<sup>nd</sup> February 2025. Citing judicial determinations in *Salomon vs Salomon & Co. Ltd* {1897} AC 22 H.L; *Kolaba Enterprises Ltd vs Shamsudin Hussein Varvani* {2014} eKLR and *Victor Mabachi & Another vs Nurturn Bates Limited* {2013}, the Respondent attacks the suit as “incompetent and unsustainable” and is thus for striking out with costs.
  11. The court directed both the application and the preliminary point to be disposed of together and learned Counsel for the parties made oral submissions. Mr Mwangi advocate for the Applicants submits that the application is merited and reiterated the averments in the Applicants' affidavit. It is contended that the Respondent failed to adhere to the Registrar of Companies' directions on convening of the AGM. In particular, it is alleged that Section 721 of the *Companies Act* was not complied with. Counsel therefore submits that the application meets the threshold for grant of injunction as prayed.
  12. Mr Karanja advocate for the Respondent also underscored his client's affidavit evidence. Counsel told the court that Respondent cannot be sued in her individual capacity by dint of the jurisprudence in the famous old case *Salomon vs Salomon supra*. The Respondent maintains that Order 42 of the Companies Rules governing companies' Annual General Meetings was complied with in holding the contentious meeting.
  13. In a rejoinder, Mr Mwangi replied that the case of *Salomon vs Salomon* is not applicable herein for the reason that the Respondent is sued in person for acting unilaterally and breaching section 721 of the *Companies Act*.
  14. I have perused the rival affidavit evidence and the learned Counsel's submissions on this application. I will first determine the preliminary point to wit; that the Respondent cannot be sued in her personal capacity for the reason that the Applicants are complaining about the activities of the company as allegedly spearheaded by the Respondent as chair of the Board of Directors. It cannot be gainsaid that shareholders and/or directors of a limited liability company are not sued in their individual capacities for acts or omissions of the company. The reason is because such a company is an artificial person with corporate existence capable of suing or being sued in its name, as long held in *Salomon vs Salomon supra* and many other succeeding judicial determinations. For instance, the Court of Appeal in *Victor Mabachi & Another vs Nurturn Bates Limited* (2013)eKLR also relied upon by the Applicants observed that a limited liability company as a body corporate is *persona juridica*, with a distinct and independent identity in law from its shareholders, directors and agents, unless the corporate veil is lifted in appropriate circumstances.
  15. Besides, the Applicants don't appear to have complied with the provisions of Section 238 of the *Companies Act* requiring such an action, called a derivative action, to be brought only with the leave of the court. The enactment defines a “derivative claim” to mean;
    - a. In respect of a cause of action vested in the company; and



b. Seeking relief on behalf of the Company.....”

16. In *Nextgen Office Suites Ltd & Another vs Netcom Investments Limited & Another Shah Minakshi Navinhandra (Interested Party)* [2021] eKLR it was observed that a derivative action is brought by a company’s Shareholder to redress a wrong done to the Company;

“As distinct from where shareholders wish to enforce their own personal shareholder rights, in which case they would have personal redress and would thus rely on a personal action rather than a derivative action.”

17. In *Ghelani Metals Limited & 3 Others vs Elesh Ghelani Natwarlal & Registrar of Companies HCCC 102 of 2017* it was further noted inter alia that a derivative action;

“is designed as a tool of accountability to ensure redress is obtained against all wrong doers, in the form of a representative suit filed by a shareholder on behalf of the Corporation.”

18. The Applicants are evidently complaining on behalf of the company and want its accounts to be properly prepared, audited and presented before a lawfully convened AGM. This suit therefore purports to be brought in the interests of the company without leave contrary to the requirement of the law. The preliminary point is therefore well taken and is sustainable.

19. If I were to determine the application on merits, in the popular case of *Nguruman Limited vs Jan Bonde Nielsen & 2 Others* (2014) eKLR which in turn cites the case of *Giella vs Cassman Brown Company* with approval, three requirements have to be satisfied before grant of an interlocutory injunction;

a. The Applicant has to establish a prima facie case.

b. He/she must demonstrate that irreparable injury will result if a temporary injunction is not granted

and

c. If the court is in doubt it will determine the application on the basis of the balance of convenience.

20. The three limbs are to be surmounted sequentially (see *Nguruman Limited vs Jan Bonde Nielsen & 2 Others* [2014] eKLR). This means the Applicant has to satisfy each of the three elements to obtain injunction orders

21. In *Mrao vs First American Bank of Kenya Limited & 2 Others* (2003) eKLR a prima facie case in civil cases was defined thus;

“A case which on the material presented, the court or tribunal properly directing itself will conclude that there exists a right which had apparently been infringed by the opposite party as to call for explanation or rebuttal from the latter.”

22. The Applicants attack the Respondent for unilaterally running the affairs of the subject company contrary to the relevant Memorandum and Articles of Association. They have not, however, responded to the averments in the Respondent’s affidavit in reply, as by means of a supplementary affidavit, to the effect that they fully participated in the meeting in question proceedings of which they now complain. I have seen purported minutes of the meeting that seem to indicate that the meeting was properly and peacefully held. The Respondent told the court that the 1<sup>st</sup> plaintiff/Applicant personally vetted the



meeting's attendees and further that there was no chaos since security was provided. In the face of this evidence, the Applicants ought to have filed a further affidavit, failure to which it would be deemed that they do not dispute the evidentiary and factual position. Moreover, the court has already found that the Applicants wrongly sued the Respondent in her personal capacity.

23. As already found, the Respondent's preliminary objection is sustained and this finding is sufficient to dispose of the application and the suit. The suit is accordingly struck out. In light of the relationship between the parties as directors of the company, no order is made as to the costs.

**J. M. NANG'EA, JUDGE.**

**RULING DELIVERED VIRTUALLY THIS 13<sup>TH</sup> DAY OF JUNE, 2025 IN THE PRESENCE OF:**

Mr. Njoroge Advocate for the Plaintiffs/Applicants.

Mr. Karanja Advocate for the Defendant/ Respondent.

Court Assistant (Jeniffer).

**J.M. NANG'EA, JUDGE.**

