



**Meridian Acceptances Limited v Muchungu (Commercial Case E743 of 2021)
[2025] KEHC 10037 (KLR) (Commercial and Tax) (10 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10037 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E743 OF 2021**

PM MULWA, J

JULY 10, 2025

BETWEEN

MERIDIAN ACCEPTANCES LIMITED PLAINTIFF

AND

JAMES NDWIGAH MUCHUNGU DEFENDANT

RULING

1. Before the Court is a Notice of Motion dated 13th December 2024, brought by the Defendant/Applicant and filed through the firm of Kimani & Company Advocates. The application seeks the following substantive orders:
 - A. Spent
 - B. Pending the hearing and determination of this application inter partes, an order compelling the Respondent to furnish, within fourteen (14) days, the Company's audited financial statements for the years 2021 to 2024; bank account statements and the names of authorized signatories; and the minutes and resolutions of all Board and Annual General Meetings held between 2021 and 2024.
 - C. Pending the hearing and determination of the suit, an interlocutory injunction restraining the Respondent, its agents, servants, employees, or any person acting under its authority, from altering the shareholding or directorship structure of Meridian Acceptances Limited, or tampering with or amending the Company's records at the Registrar of Companies.
 - D. An order appointing a Certified Public Accountant or such other competent inspector pursuant to Sections 786 and 787 of the *Companies Act*, 2015, to report to the court thereon in respect to ascertain;



- i. The position of the company's shareholding and any changes made thereto since August, 2021.
 - ii. The financial standing of the Company, including bank accounts, signatories, and any diversions of Company funds.
 - iii. Position in respect of meetings including Annual General meetings, special meetings called out or held by the Company between year 2021 and 2024, if at all and resolutions if any and minutes thereof.
 - iv. The position in respect of compliance with statutory obligations, including the filing of annual returns, tax compliance, and adherence to the *Companies Act*, 2015.
 - v. The position in respect of transactions or contracts entered into by the Company, including procurement, service providers, and remuneration of directors and shareholders.
 - vi. The convening and conduct of Board of Directors' meetings and Annual General Meetings (AGMs), including resolutions passed and minutes recorded.
 - vii. Appointment and removal of auditors, company secretaries, and other key officers of the Company.
 - E. An order directing an audit of the Company's financial and tax records from 2021 to 2024 to ascertain compliance with the *Companies Act* and other relevant laws.
 - F. An order directing the Registrar of Companies to file a detailed report on all filings, changes in shareholding, directorship, and resolutions for the years 2021 to 2024.
 - G. That costs of this application be borne by the Respondent.
2. The application is premised on Article 159(2)(d) of *the Constitution*, Sections 1A, 1B and 3A of the *Civil Procedure Act*, and Sections 114, 478(8), 780, 782, 785, 786 and 796 of the *Companies Act*, 2015. It is supported by the affidavit of the Applicant, sworn on 13th December 2024. The Applicant describes himself as a minority shareholder and former Managing Director of the Company. He alleges systematic exclusion from management, non-compliance with statutory duties, financial impropriety, including diversion of company funds, and unlawful alteration of company records.
 3. The Respondent opposes the application through a replying affidavit sworn on 10th February 2025 by one Anne Kamau. She deposes that the Applicant was the Managing Director until his removal in 2022 and was in possession of company records at the time. She confirms that the Company only holds unaudited financial statements for the years 2023 and 2024 and has not held any AGMs. She accuses the Applicant of misappropriation of Company funds and argues that the Company has not refused to appoint auditors, rendering the application premature.
 4. The application was canvassed by way of written submissions. The Applicant's submissions are dated 12th February 2025 and those by the Respondents are dated 17th February 2025. The single issue for determination is whether the Applicant has made out a case for the grant of the reliefs sought..

Analysis and determination

5. I have carefully considered the Notice of Motion, the affidavits on record, and the respective submissions by counsel. The Applicant invokes provisions of the *Companies Act* that empower



- this Court to safeguard shareholder rights and compel disclosure where there are allegations of mismanagement and non-compliance.
6. Section 478(8) of the *Companies Act* stipulates as follows:
 - (8) If a company refuses to allow an inspection as requested under subsection (4), or to provide a copy of a record requested under subsection (5), the Court may, on the application of a person affected by the refusal, make an order compelling the company to allow an immediate inspection of the records, or to provide that person with a copy of the requested record.
 7. While Section 786(1) (a) (ii) thereof states:
 - (1) The Court may appoint one or more competent inspectors to investigate the affairs of a company and to report on those affairs in such manner as the Court directs—
 - (a) in the case of a company having a share capital — on the application either of—
 - (ii) members holding not less than one-tenth of the nominal value of the company's share capital.”
 8. In the instant case, the Applicant alleges exclusion from management, failure to comply with statutory obligations, financial impropriety, and denial of access to records. The Respondent, while denying wrongdoing, admits to non-compliance with some statutory obligations—specifically the failure to convene AGMs and the absence of audited financial statements for recent years.
 9. The Applicant's assertion that he has been denied access to records remains uncontroverted by documentary evidence from the Respondent. The Respondent's position that the Applicant held office until 2022 does not absolve the Company of its duty to maintain and disclose records thereafter.
 10. Sections 128 and 129 of the *Companies Act*, 2015 give shareholders the right to inspect company records, including financials and resolutions. The Applicant, being a shareholder, is lawfully entitled to access such records unless lawfully restricted. The denial of this right contravenes the statutory duty of transparency and disclosure.
 11. In *Shimmers Plaza Ltd v National Bank of Kenya Ltd* [2015] eKLR, the Court underscored the utility of interim relief in preserving rights and preventing irreparable harm before final determination. I find the Applicant's request for disclosure and inspection to be justified and grounded in law.
 12. In light of the totality of the material before the Court, coupled with the admitted gaps in statutory compliance, I am satisfied that the Applicant has demonstrated a prima facie case warranting intervention. There is sufficient cause to warrant protection of the Company's records and shareholding structure pending further inquiry. This Court is also persuaded that an independent inspection of the Company's affairs is necessary to ascertain the truth of the allegations.

Injunction

13. The Applicant also seeks an interlocutory injunction restraining the Respondent from altering the shareholding or directorship structure of Meridian Acceptances Limited and from effecting any changes at the Registrar of Companies pending the determination of the suit. The principles for granting orders of injunction were settled in the case of *Giella v Cassman Brown & Company Limited*



(1973) E A 358, where the court expressed itself on the conditions that a party must satisfy for the court to grant an interlocutory injunction as follows: -

“First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the Court is in doubt, it will decide an application on the balance of convenience.”

14. I have already found that the Applicant has a prima facie case. On the issue of irreparable harm, I am persuaded that alterations to the Company’s shareholding or directorship structure, if made before this matter is fully adjudicated, may occasion prejudice that cannot be adequately redressed by damages. Corporate filings, once acted upon by regulators and third parties, may generate legal and procedural complications that undermine the final outcome of the suit.
15. On the balance of convenience, it is in the interest of justice to preserve the status quo ante litem. No substantial prejudice will be occasioned to the Respondent by maintaining the current structure of the Company pending determination of the suit.

Disposition

16. In the circumstances, I find that the application dated 13th December 2024 is merited and issue the following orders:
 - I. The Respondent shall, within fourteen (14) days from the date of this ruling, furnish the Applicant with:
 - a. Audited financial statements for the years 2021 to 2024 (or unaudited statements where audits are unavailable),
 - b. Bank account statements together with the names of all authorized signatories,
 - c. Minutes and resolutions of all Board and Annual General Meetings held from 2021 to 2024.
 - II. An interlocutory injunction be and is hereby issued restraining the Respondent, its agents, servants, directors, employees, or any person acting under its authority from::
 - a. Altering or changing the shareholding or directorship structure of Meridian Acceptances Limited;
 - b. Tampering with or altering the Company’s records at the Registrar of Companies, including but not limited to shareholding, directorship and filed returns, pending the hearing and determination of the suit.
 - III. The Court hereby appoints a Certified Public Accountant, to be agreed upon by the parties and approved by the Court within seven (7) days from the date hereof, to act as an inspector pursuant to Sections 786 and 787 of the Companies Act. The Inspector shall report to the Court on:
 - a. The current shareholding structure and any changes made thereto since August 2021;
 - b. The Company’s financial standing, including bank accounts, signatories, and any diversion of Company funds;



- c. Compliance with statutory obligations under the *Companies Act*, 2015, including the holding of meetings, filing of annual returns, and tax compliance;
 - d. Transactions and contracts entered into by the Company, remuneration structures, and appointment/removal of key officers.
- IV. The Registrar of Companies is hereby directed to file, within thirty (30) days, a comprehensive report detailing all filings, resolutions, and changes to shareholding and directorship in Meridian Acceptances Limited between the years 2021 and 2024.
- V. The costs of the inspection and audit shall be borne equally by the parties.
- VI. Each party shall bear their own costs of the application.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 10TH DAY OF JULY 2025.

PETER M. MULWA

JUDGE

In the presence of:

Ms. Obura hb for Mr. Seko for Plaintiff

Mr. Kimani for Defendant/Applicant

Court Assistant: Carlos

