



REPUBLIC OF KENYA



**Pevans East Africa Limited v Ndung'u & another (Civil Case E002 of 2023)
[2025] KEHC 12664 (KLR) (Commercial and Tax) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 12664 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE E002 OF 2023
F GIKONYO, J
JULY 31, 2025**

BETWEEN

PEVANS EAST AFRICA LIMITED PLAINTIFF

AND

PAUL WANDERI NDUNG'U 1ST DEFENDANT

ASENATH WACHERA MAINA 2ND DEFENDANT

RULING

1. The plaintiff filed the suit against the defendants, its former members and directors, seeking a permanent injunction to restrain them from interfering with its business dealings or taking any action on its behalf or interest. It also seeks damages for loss of business, costs of the suit and interest on both.
2. The plaintiff's claim is that the defendants acted ultra vires, in breach of their duties to safeguard its business secrets, interests and property. That they lost all their membership rights after they were expelled from membership at a general meeting held on 8th October 2022.
3. The plaintiff averred that the defendants have filed frivolous and vexatious suits against its business partners and regulators, made and published false and slanderous statements against its directors and business partners and regulators, all to damage or bring down its business and commercial interests, to the extent that it has been denied a license to operate betting business in the country.
4. In response, the 1st and 2nd defendants filed their respective statements of defence and counterclaims dated 6th and 13th February 2023. They claimed illegality and irregularity and sought various injunctions and declarations against the plaintiff.



5. The 2nd defendant filed a request for particulars dated 20th February 2023. The plaintiff filed a replying affidavit sworn by Robert Macharia to the effect that the 2nd defendant had not shown how the purported omitted particulars had incapacitated her from rendering her statement of defence.
6. The 1st defendant filed a request for particulars and notice to produce, both dated 29th February 2023.
7. Through the ruling dated 13th March 2025, Justice Mabeya dismissed an application dated 31st October 2023 by the 2nd defendant seeking to be granted the particulars requested in her request for particulars dated 20th February 2023. He reasoned that:-

“ 13. ... it is my view that looking at it wholly, the said request constitutes a request for evidence in form of documents which is a matter to be dealt with by the process of discovery. The 2nd defendant’s request is seeking specific documents which constitute a request for evidence that will be adduced during the hearing and subject to cross-examination.

14 I think the 2nd defendant should wait and obtain what she seeks through discovery and not through the request for particulars.”

The present application

8. What is now for consideration is the 1st defendant’s notice of motion dated 14th June 2024, seeking:-
 1. That there be and is hereby issued an order compelling the Plaintiff to furnish the 1st Defendant with the particulars requested for in the Request for Particulars dated 29th February 2024 within 14 days of this order.
 2. That there be and is hereby issued an order compelling the Plaintiff to produce the documents in the Notice to produce dated 29th February 2024 within 14 days of this order.
 3. That the suit stands struck out if Plaintiff fails to comply with either prayers 2 or 3.
 4. That costs be provided for.
9. The application is expressed to be brought under Sections 1A, 1B, 3A and 22 of the [Civil Procedure Act](#), Order 2 Rule 10 and 15 of the [Civil Procedure Rules](#) and Articles 47, 48, 50 (1) & (2) and 159 (2) of the [Constitution of Kenya](#).
10. The application is premised on the grounds outlined in its body, the annexed affidavit sworn by the 1st defendant and written submissions dated 10th June 2025.
11. The main grounds are that:-
 1. The 1st defendant filed and served the plaintiff with a request for particulars and a notice to produce, both dated 29th February 2024.
 2. The plaintiff responded vide an answer dated 18th April 2024, stating that the documents requested are confidential and that the documents are annexed to affidavits of Robert Macharia of 6th January 2023 and 2nd March 2023.
 3. They argued that the first ground is baseless as the documents requested are relevant to the just determination of the case, which ought to have been provided to the 1st plaintiff in his capacity as a shareholder and relate to averments made by the plaintiff in the Plaintiff.



4. On the latter issue, it is obvious that annexures to an affidavit are not part of the trial bundle that will be used at trial and in any event are not the documents sought by the 1st defendant.
5. It is noteworthy that there is no effort whatsoever that has been made to respond to the request for particulars.
6. Under the above cited provisions, this court has the mandate to make the orders sought in order to protect the defendants who are forced to respond to a suit that is a non- starter and is an abuse of court process.
7. Preliminarily, the ruling made by the court on 12th October 2023 found that the plaintiff is pursuing a matter that is an abuse of court process as the plaintiffs are attempting to use the court to execute illegal resolutions and to make it impossible for the 1st and 2nd defendants to pursue legitimate derivative suits against the executive directors of the Plaintiff who have run down the company and stripped it of its assets.
8. The 1st defendant only seeks to assist the court and all parties to have all the relevant information so that a holistic determination that is just is arrived at within the shortest time possible and further, to ensure that litigation is not done piecemeal.
9. Articles 47, 48 and 50 read holistically demand that a dispute that comes before this court is handled fairly and that Defendants are given a fair hearing which includes an opportunity to challenge evidence, request for full particulars of the accusations in court and to be provided with all documents beforehand.
10. There is a Defence & Counterclaim on record which may require further amendment and it would be apropos for this court to grant the prayers sought.
12. The 1st defendant relied on:-
 1. [*Lavington Security Limited v Consolidated Bank of Kenya & 3 others* \[2020\] eKLR](#)
 2. *Bruce v Odhams Press Limited* 1963 1 KB 697
 3. [*Ruth N. M. Onyancha v Standard Limited* \[2007\] eKLR](#)
 4. [*Barclays Bank of Kenya Limited v Christopher Orina Kenyariri & Another* \[2017\] eKLR](#)

Response

13. The plaintiff opposed the application through a replying affidavit sworn on 10th July 2024 by Robert Macharia and written submissions dated 9th November 2024.
14. In a nutshell, the plaintiff's grounds of opposition are:-
 1. The requests are vague, omnibus, or overly broad, making compliance burdensome and unreasonable.
 2. Many of the requested documents are irrelevant or unnecessary for the fair determination of the suit.
 3. Some of the documents are either publicly available or in the possession of third parties not involved in the proceedings, and thus beyond the plaintiff's control.
 4. Several requests seek confidential and privileged information, the disclosure of which would infringe on the privacy and commercial interests of the plaintiff or third parties.



5. The plaintiff has already made full and sufficient disclosure of all documents and particulars in its possession that are relevant to the issues in dispute.
 6. The request amounts to a fishing expedition rather than a legitimate attempt to clarify or resolve the issues at hand.
15. The plaintiff submitted that the suit discloses triable issues and should be allowed to proceed to hearing. It therefore urged the court to dismiss the 1st defendant's application with costs.
16. The plaintiff relied on:-
1. [*ABN Amro Bank N.V. v Kenya Pipeline Company Limited*](#) [2014] eKLR
 2. [*Rafiki Microfinance Bank Ltd v Zenith Pharmaceuticals Ltd*](#) [2016] eKLR
 3. [*Edwin Harold Dayan Dande & 3 others v The Inspector General, National Police Service & 4 others*](#) (Petition No. 6 (E007) of 2022, consolidated with Petition Nos. 4 (E005) & 8 (E010) of 2022), Judgment, 16 June 2023
 4. [*SBM Bank \(Kenya\) Limited v Singh*](#) [2022] KEHC 12172 (KLR) – Civil Case E503 of 2020, Ruling, 22 August 2022

Analysis and Determination

17. In his application, the 1st defendant seeks compliance with his request for particulars and notice to produce. The two prayers are distinct.
18. In my view, given the type of documents sought, there is no basis laid for the notice to produce which may as well be premature.
19. I now move to consider the prayer seeking compliance with the 1st defendant's request for particulars dated 29th February 2024.
20. Order 2 Rule 10 of the [*Civil Procedure Rules*](#) provides that every pleading shall contain the necessary particulars of any claim, defence or other matter pleaded.
21. A party may request further particulars, and the court may order a party to serve on any other party particulars of any claim.
22. The rationale for the above is that litigation should be conducted fairly and openly, not by ambush. The particulars of facts are what enable the other side to know what case it is defending. [*Kenya Tea Development Agency Management Services Limited & another v AIG Kenya Insurance Company Limited*](#) (Civil Case E208 of 2021) [2022] KEHC 662 (KLR) (Commercial and Tax) (5 May 2022) (Ruling)
23. The 1st defendant sought the particulars of paragraphs 4, 5, 6, 8, 12(a), (b), (c) and (d), 13, 22, 25, 26, 27, 28, and 30 of the plaint dated.
24. In [*Habiba Ali Mursai & 4 others v Mariam Noor Abdi*](#) [2021] eKLR discussed the threshold required to order compliance:-

“ 57. Suffice it to say, that he who requests for particulars, must state and/or stipulate the kind or nature of particulars sought for and in respect of what paragraph of the pleading. However, that is not the case in respect of the instant matter.



58. Secondly, it is also important for the claimant to also delineate how the omitted particulars if any, have incapacitated the claimant from rendering his/her statement of response and/or occasioned a prejudice on him or herself.
59. Thirdly, the Claimant must also ensure that what is being sought for does not fall in the bracket of what amounts to and/or constitutes a Fishing Expedition.”
25. The 1st defendant submitted that the plaint filed in this court is wanting on several fronts, being that the claims made by the plaintiff are made bereft of any particularization.
26. From a study of his request for particulars, in summary, the 1st defendant sought the particulars of:-
1. The date of the plaintiff’s memorandum of association and cause for their certification under paragraph 4 of the plaint.
 2. Cause of cessation of business under paragraph 5 of the plaint.
 3. Any demands issued to the 1st defendant prior to 2018 under paragraph 5 of the plaint.
 4. Particulars of registration of the WIPO trademark 1339902 “Sportpesa” showing Kenya as a designated territory under paragraph 6 of the plaint.
 5. Dates, time and attendance at meetings approving goodwill for the Sportpesa trademark under paragraph 6 of the plaint.
 6. Robert Macharia’s directorship in Sportpesa Global Holdings Limited when he issued the letter to the registrar of trademarks dated 9th September 2020 under paragraph 6 of the plaint. Dates and particulars of its office lease agreement for Chancery Building from 2013 to date under paragraph 8 of the plaint.
 7. Date of issuance of betting license to Milestone Games Limited by the Betting Control and Licensing Board (BCLB) as at April 2020 and details of the contract between the plaintiff and Milestone under paragraph 12 (a) (b) (c) and (d) and 13 of the plaint.
 8. Provisions which the 1st defendant acted ultra vires under paragraph 22 of the plaint.
 9. Dar-es-Salaam meeting details, why the meeting was held there, why there was no option to attend virtually under paragraph 27 of the plaint.
 10. Conduct that led to the denial of a betting license to the plaintiff by BCLB under paragraph 25 of the plaint.
 11. Shareholder’s meeting that purportedly approved the acquisition of plaintiff’s pay bill numbers 9XXXXXX0 and 9XXXXXX0 to Milestone and the actual funds in the two accounts under paragraph 12 (c) of the plaint.
 12. Financial losses, business opportunities, loss of credit, loss of prospective customers, investors and partners attributable to the 1st defendant under paragraph 26 of the plaint.
 13. Date and findings of the comprehensive audit report commissioned by the board and particulars of the auditor under paragraph 28 of the plaint.
 14. Details of the court cases relating to the alleged tax liability of Kshs. 17.5 billion as per the financial statements for 2020 & 2021 under paragraph 30 of the plaint.



27. From my evaluation, the request for particulars under (2), (8) and (10) above have been provided in the plaint. Paragraphs (1), (3), (5), (9), (12), (13) and (14) relate to evidence, not particulars of fact. Evidence must not be set out in pleadings.
28. The 1st defendant has not shown how the particulars sought under paragraphs (4), (5), (6), (7), and (11) above are necessary and relevant to or how they have handicapped him from rendering his statement of response.
29. The request for particulars is a real fishing expedition in its perfect form.

Disposal

30. In the upshot, the court is not persuaded that the 1st defendant has met the threshold required for compelling the plaintiff to furnish the 1st Defendant with the particulars requested for in the Request for Particulars dated 29th February 2024.
31. The prayer seeking to compel production of documents pursuant to the notice to produce dated 29th February 2024 is declined as no basis has been laid for it and it is premature.
32. Costs of the application shall be in the cause.

DATED, SIGNED AND DELIVERED AT NAIROBI THROUGH MICROSOFT TEAMS ONLINE APPLICATION THIS 31ST DAY OF JULY 2025

F. GIKONYO M

JUDGE

In the presence of: -

1. Otieno Willis/Oboso for plaintiff
2. Diana/Kosgei for 1st defendant
3. Dr. Ekura Absent
4. Ms. Makena for 2nd defendant
5. CA Kinyua

