



Alibhai & another v Mua Limited Mauritius & 3 others (Commercial Miscellaneous Application E334 of 2025) [2025] KEHC 13164 (KLR) (Commercial and Tax) (18 September 2025) (Ruling)

Neutral citation: [2025] KEHC 13164 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL MISCELLANEOUS APPLICATION E334 OF 2025**

MN MWANGI, J

SEPTEMBER 18, 2025

**IN THE MATTER OF SECTION 238 OF THE
COMPANIES ACT NO. 17 OF 2015 LAWS OF KENYA**

-AND-

IN THE MATTER OF MUA INSURANCE (KENYA) LIMITED

-AND-

IN THE MATTER FOR LEAVE TO COMMENCE A DERIVATIVE ACTION

BETWEEN

MOYEZ ALIBHAI 1ST APPLICANT

MAHEBOOB ALIBHAI 2ND APPLICANT

AND

MUA LIMITED MAURITIUS 1ST RESPONDENT

SAMSON NDEGWA 2ND RESPONDENT

JOERG WEBER 3RD RESPONDENT

MEHTAB ALY 4TH RESPONDENT

RULING

1. The applicants filed an *ex parte* Notice of Motion application dated 27th March 2025 pursuant to the provisions of Articles 50 & 159 of *the Constitution* of Kenya 2010, Sections 238 & 239 of the *Companies Act*, the Companies (General) Regulations, 2015, Sections 1A, 2B, 3 & 3A of the *Civil Procedure Act*,



Laws of Kenya, Order 51 Rule 1 of the Civil Procedure Rules, 2010 and all other enabling provisions of the law.

2. The applicants seek an order for leave to institute a derivative suit on behalf of MUA Insurance (Kenya) Limited against the respondents, for breach of fiduciary duty and trust in their capacity as Directors of the said Company. They also pray for the plaint and the pleadings attached to the affidavit to be deemed duly filed upon the Court granting them leave to commence the derivative suit. They also seek an order for temporary injunction restraining the respondents from selling, transferring, or dealing with MUA Kenya's shares in MUA Tanzania and MUA Uganda to MUA Mauritius, pending the hearing and determination of the instant application and this suit, and an order for stay of the sale of the company's assets pending an independent valuation and if necessary, a competitive re-bidding process.
3. The application was filed under a Certificate of Urgency and it was placed before me on 31st March 2025. I did not grant interim orders but I scheduled this matter for mention on 8th April 2025 for further directions. On that day, when Counsel for the parties herein appeared before me, Ms Eunice Akello, learned Counsel for the applicant made an oral application for status quo orders to be granted. The said application was opposed by Mr. Oraro, learned Counsel for the respondents, who stated that the company in respect of which the orders were being sought is not a party to these proceedings, thus status quo orders could not be granted.
4. In response, Counsel for the applicants contended that the application was intentionally framed to read "In the matter of" as they are seeking to safeguard the interests of MUA Insurance (Kenya) Limited.
5. I directed that the question of whether or not status quo orders should be granted in this suit be canvassed through written submissions. The applicants' submissions were filed on 17th April 2024 by the law firm of Shapley Barret & Company Advocates, whereas the respondents' submissions were filed by the law firm of Coulson Harney LLP on 28th April 2025.
6. Ms Akello, relied on the cases of *Waweru v Karoki; County to County Choma Grill Limited (Interested Party)* [2024] KEHC 5358 (KLR) and submitted that a derivative action is a legal remedy that allows a shareholder or Director to sue on behalf of a company when the company itself is unable or unwilling to take action against wrongs done to it, typically due to control by majority shareholders or the management. She stated that pursuant to the provisions of Sections 238 - 241 of the *Companies Act, 2015*, the company need not be joined at the leave stage, as doing so would undermine the purpose of an expedited process. She contended that the company may be joined later as a nominal party, but its inclusion is not legally required at this preliminary stage.
7. Counsel relied on the case of *Republic v National Environment Management Authority; Water Service Providers Association (WASPA) (Intended Interested Party/Applicant) Ex parte Nairobi City Water and Sewerage Company & another* [2021] KEHC 7859 (KLR). In citing the provisions of Order 1 Rule 9 of the Civil Procedure Rules, 2010, Ms Akello submitted that the respondents' claim that failure to join MUA Insurance (Kenya) Limited in this suit renders the application defective is legally unfounded, since non-joinder or misjoinder of parties does not invalidate a suit. She argued that since the applicants are not seeking reliefs against MUA Insurance (Kenya) Limited, its absence as a party does not prejudice these proceedings. In addition, she stated that under Order 1 Rule 10 of the Civil Procedure Rules, 2010, this Court retains discretion to add parties as needed, she emphasized that the application remains competent and properly before the Court.
8. She cited the case of *Kenya Airline Pilots Association (KALPA) v Co-operative Bank of Kenya Limited & another* [2020] KEHC 1672 (KLR) and asserted that status quo orders are intended to safeguard



the subject matter and prevent actions that could render the Court's eventual decision meaningless. She urged this Court to issue orders preserving the status quo, specifically the shares held by MUA Insurance (Kenya) Limited in MUA Tanzania and MUA Uganda, pending determination of the leave application.

9. She submitted that it is necessary to maintain the current state of affairs so as to prevent irreversible harm as the respondents who control MUA Insurance (Kenya) Limited are attempting to dispose of the company's holdings in a non-competitive and self-serving transaction with MUA Mauritius. She submitted that in the absence of an order preserving MUA Insurance (Kenya) Limited's shares, this suit's purpose will be defeated and the company will suffer irreparable harm in the event that this Court declines to issue an order of status quo.
10. Mr. Oraro, learned Counsel for the respondents submitted that MUA Insurance (Kenya) Limited is part of the larger MUA group operating in Kenya, Uganda, and Tanzania, and that the parent company, MUA Ltd, holds a majority share in MUA Kenya through MUA Trans Africa Holdings Plc. He stated that the dispute between the parties herein centers around a proposed transaction in which MUA Kenya plans to sell its shareholding in MUA Tanzania & MUA Uganda to MUA Ltd. Counsel stated that the decision was made due to MUA Kenya's ongoing financial struggles, including failure to meet statutory capital requirements, and as such, MUA Kenya's Board explored two options which included a rights issue plus share acquisition by MUA Ltd subject to regulatory exemptions, and sale of shares in MUA Tanzania and MUA Uganda to MUA Ltd, based on independent valuations in the event that exemptions were not granted.
11. Counsel submitted that on 18th February 2025, MUA Kenya's Board with the applicants present resolved to proceed with the option of approving the sale of shares to MUA Ltd at prices determined from valuations by Ernst & Young and Deloitte, subsequent to which the applicants expressed interest in purchasing the shares at a substantially higher value vide a letter dated 13th March 2025, but did not submit a binding offer. He stated that the respondents in a letter dated 17th March 2025 invited them to submit an offer with assurance of a quick completion, but the applicants failed to do so and instead filed the instant application primarily to challenge MUA Kenya's Board Resolution and the proposed transaction. He contended that due to the fact that MUA Kenya is in a financial crisis with a solvency deficit of Kshs.867,500,000/=, the company urgently needs capital to address a -44.6% solvency deficit and to avoid statutory management, which would cause irreparable harm to shareholders, policyholders, and employees.
12. Mr. Oraro argued that the status quo orders being sought by the applicants ought not to be granted because, MUA Kenya, is not a party to these proceedings and since under Section 241(c) of the [Companies Act](#), Courts are required to deny leave where the contested act was Board-authorized, as in this case. To buttress these submissions, he relied on the case of *Banja & another v AP Solutions OY & another* [2021] KEHC 350 (KLR) & *Patel v Patel & another; Patel & 4 others (Interested Parties)* [2022] KEHC 12670 (KLR). He submitted that the applicants' alleged harm is speculative and if they succeed in their derivative suit, damages would suffice. He further submitted that the regulatory approval process is long and prevents the immediate implementation of the transaction, thus no imminent risk exists. He asserted that granting a status quo order would not only undermine legitimate Board decisions but also jeopardize the company's survival and public interest.

Analysis And Determination.

13. Upon consideration of the applicants' application seeking the grant of status quo orders and the submissions by Counsel for the parties, the issue that arises for determination is whether an order for status quo should issue.



14. Status quo has been defined in the Black’s Law Dictionary 9th Edition, as a Latin word which means “the situation as it exists”. The objective of a status quo order has been emphasized in various judicial decisions, such as in the case of Republic v National Environment Tribunal, Ex-parte Palm Homes Limited & another [2013] eKLR, where the Court in defining what entails an order for status quo held that -

When a court of law orders or a statute ordains that the status quo be maintained, it is expected that the circumstances as at the time when the order is made or the statute takes effect must be maintained. An order maintaining status quo is meant to preserve existing state of affairs...Status quo must therefore be interpreted with respect to existing factual scenario...

15. The Court in the case of Kenya Airline Pilots Association (KALPA) v Co-operative Bank of Kenya Limited & another (supra) explained the purpose of status quo orders as hereunder –

By maintaining the status quo, the court strives to safeguard the situation so that the substratum of the subject matter of the dispute before it is not so eroded or radically changed or that one of the parties before it is not so negatively prejudiced that the status quo ante cannot be restored.

16. Status quo orders are ordinarily issued to preserve the rights or interests of parties before the Court. In this case, it is not disputed that MUA Insurance (Kenya) Limited is not a party to these proceedings, thereby raising concerns about the Court’s jurisdiction to grant conservatory orders concerning its property or affairs at this stage. The respondents contended that although the applicants maintain that joinder is not necessary at the leave stage in a derivative action, any orders that directly impact the assets of MUA Insurance (Kenya) Limited may nonetheless require its participation, or at the very least, notification, in order to comply with the principles of natural justice.

17. Applications for leave to proceed with a claim as a derivative action are provided for under Section 241 of the *Companies Act*. Section 241(1) of the said Act specifically provides for instances when Courts can refuse to grant leave for a suit to proceed as a derivative action. It states that -

1. If a member of a company applies for permission under section 239 or 240, the Court shall refuse permission if satisfied -
 - a. that a person acting in accordance with section 144 would not seek to continue the claim;
 - b. if the cause of action arises from an act or omission that is yet to occur, that the act or omission has been authorized by the company; or
 - c. if the cause of action arises from an act or omission that has already occurred, that the act or omission -
 - i. was authorized by the company before it occurred; or
 - ii. has been ratified by the company since it occurred. (Emphasis added).

18. The import of the above provisions is that a shareholder or member of a company cannot be granted leave to pursue a derivative claim where the act or omission being challenged was either duly authorized in advance or subsequently ratified by the company through a proper process. Consequently, where the impugned action has been approved by a validly convened Board or General Meeting, the Court is obligated to dismiss any attempt by a shareholder to contest it through a derivative suit. This provision



upholds the principle of majority rule in corporate governance. It is a well-established principle that a company, as a separate legal entity operates through decisions made by its Board or shareholders. Therefore, where a legitimate decision has been made by the majority, minority shareholders cannot seek to overturn it through litigation, except where there is evidence of fraud, illegality, or oppressive conduct.

19. Upon review of the application and the averments made by the applicants, it is evident that one of the orders being sought is to stay the sale of the company's assets pending an independent valuation and if necessary, a competitive re-bidding process. It is however apparent that both parties agree that the proposed sale of MUA Insurance (Kenya) Limited's shares in MUA Tanzania and MUA Uganda to MUA Mauritius was approved through a formal Board resolution. It is also undisputed that the decision to sell the shares at Kshs.25.60 per share was based on valuations conducted by Ernst & Young and Deloitte.
20. Although the applicants assert that the shares held by MUA Insurance (Kenya) Limited in MUA Tanzania and MUA Uganda were worth significantly more than the price offered to MUA Mauritius, they did not produce an alternative Valuation Report to substantiate that claim. Further, the applicants do not dispute that MUA Insurance (Kenya) Limited urgently requires capital to address a -44.6% solvency deficit and avert the risk of statutory management. In addition to the foregoing, it is evident that the actions being challenged by the applicants have already been carried out, and prior to their execution, they were duly authorized by the Board of MUA Insurance (Kenya) Limited.
21. Even though the applicants assert that failure to grant a status quo order may result in irreparable harm, any potential loss they may suffer can be adequately compensated by an award of damages, should they be granted leave to pursue the derivative claim and ultimately, if they succeed in the suit. Additionally, it is not disputed that MUA Insurance (Kenya) Limited is currently grappling with a severe solvency deficit. This implies that any delay in the proposed transaction could trigger statutory management or regulatory sanctions, posing serious risks not only to shareholders but also to policyholders and employees. The respondents have maintained that the transaction is subject to regulatory approvals, which must be obtained before it can proceed, thereby reducing the likelihood of any irreversible developments before the substantive issues in this suit are resolved.
22. I am therefore not persuaded that it is in the interest of justice to grant an order for status quo in respect to the assets of MUA Insurance (Kenya) Limited.
23. The upshot is that the applicants' oral application seeking status quo orders is not merited. It is hereby dismissed with costs to the respondents.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 18TH DAY SEPTEMBER OF 2025.
RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

NJOKI MWANGI

JUDGE

In the presence of:-

Ms Oloo h/b for Ms Akello for the applicants

Ms Mwango for the respondents

B. Wokabi – Court Assistant.

