



**Mpetti & another (Suing as the Legal Representatives of the Estate
of Samuel Sekerot Ole Mpetti) v Mpetti & 3 others (Civil Suit
E001 of 2023) [2025] KEHC 12876 (KLR) (19 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12876 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAROK
CIVIL SUIT E001 OF 2023
CM KARIUKI, J
SEPTEMBER 19, 2025**

BETWEEN

**TERESA AUMA MPETTI 1ST PLAINTIFF
DANIEL SASINE MPETTI 2ND PLAINTIFF
SUING AS THE LEGAL REPRESENTATIVES OF THE ESTATE OF SAMUEL
SEKEROT OLE MPETTI**

AND

**EDWARD KADIPO MPETTI ALIAS HASSAN E.K. OLE
MPETTI 1ST DEFENDANT
NAROK HIGHWAYS TOWERS COMPANY LIMITED 2ND DEFENDANT
REGISTRAR OF COMPANIES 3RD DEFENDANT
THE ATTORNEY GENERAL 4TH DEFENDANT**

RULING

Background

1. Before me is a Notice of Motion dated 14th February 2023 brought under Order 40 Rules 1, 2, 4, and 10 of the Civil Procedure Rules, Sections 1A, 1B, and 3A of the *Civil Procedure Act*, and all other enabling provisions of law. The Applicants, who are the administrators of the estate of the late Samwel Sekerot Ole Mpetti, seek injunctive orders restraining the 1st Defendant from collecting or utilizing dividends and payouts from the 2nd Defendant, Narok Highway Towers Company Limited, and restraining the 2nd Defendant from releasing such payouts to him pending the hearing and determination of the suit. They also seek an account of all benefits so far paid and an order to restrain the 3rd Defendant from effecting further changes in the company register.



2. The gravamen of the application is that the 1st Defendant fraudulently caused his name to be entered in the register of the 2nd Defendant in place of the deceased, thereby unlawfully benefitting from dividends and payouts.

Applicants' Case

3. The Applicants contend that the deceased was an original director of Narok Corner Bar and Restaurant Limited (now Narok Highway Towers Company Limited) at incorporation in 1987, though without shares. They argue that the 1st Defendant fraudulently inserted his name in subsequent returns of 1988 without any supporting documentation, as later confirmed by the Registrar of Companies' report dated 22nd August 2023.
4. They submit that the 1st Defendant has unlawfully consumed approximately Kshs. 6,000,000 in dividends and continues to draw about Kshs. 100,000 quarterly, thereby depriving the estate of its rightful benefits.
5. On the law, they invoke *Giella v Cassman Brown* (1973) EA 358, restated in *Nguruman Ltd v Jan Bonde Nielsen & 2 others* [2014] eKLR, submitting that they have established a prima facie case, that they stand to suffer irreparable harm, and that the balance of convenience tilts in their favour. They also rely on *Paul Gitonga Wanjau v Gathuthi Tea Factory Co. Ltd & 2 others* (2016) eKLR and *Amir Suleiman v Amboseli Resort Ltd* (2004) eKLR, urging that the injunctive orders should be granted. On costs, they rely on Section 27 of the [Civil Procedure Act](#) and *Republic v Rosemary Wanjiru Karanja & Another ex parte Paul Kihara* [2014] eKLR.

1st and 2nd Respondents' Case

6. The application is opposed through a Replying Affidavit sworn on 29th March 2023 by Johnson Kasaine Sadera, Chairman of the 2nd Defendant. He avers that the 2nd Defendant is a going concern, duly incorporated under the [Companies Act](#), and that all changes and resolutions have been conducted lawfully and procedurally. He denies that any shareholding was ever transferred from the deceased to the 1st Defendant and asserts that the Applicants are not shareholders of the 2nd Defendant and thus have no right to demand information or accounts.
7. He further contends that this dispute is essentially a family matter that ought to be ventilated in Succession Cause No. E092 of 2022, not before this Court in a commercial dispute. He urges that the application is frivolous and should be dismissed with costs.

Registrar of Companies' Report

8. Pursuant to this Court's order of 24th July 2023, the Registrar of Companies filed a report dated 22nd August 2023. The report confirms that the company was incorporated on 28th May 1987 as Narok Corner Bar and Restaurant Limited, with two original shareholders—Kekanae Ole Kudate and Wachira Mathenge—holding one share each, and six directors including the deceased, Samwel Sekerot Ole Mpetti, without shares.
9. The Registrar noted subsequent inconsistencies, particularly the annual return of 31st December 1988, which introduced Hassan E.K. Ole Mpetti (the 1st Defendant) as a shareholder without any supporting transfer documentation. Similar inconsistencies were noted in returns of 2006 and 2008.
10. Later filings show the company's change of name in 2008, an increase of nominal capital in 2015, and further allotments and transfers in 2016. As at 22nd August 2023, the company's records reflect eight



directors/shareholders—among them the 1st Defendant—each holding 500 shares, for a total of 4000 shares.

11. The Registrar specifically noted that many of the changes were unsupported by requisite documentation, raising questions about the validity of the 1st Defendant’s membership.

Analysis and determination

Issues for Determination

12. The issues arising for determination are:
 - i. Whether the Applicants have established a prima facie case to warrant the grant of an interlocutory injunction.
 - ii. Whether the Applicants stand to suffer irreparable harm.
 - iii. Where the balance of convenience lies.
13. On the first limb of *Giella v Cassman Brown*, a prima facie case is one that demonstrates an infringement of a right capable of redress. The Applicants have shown, through the Registrar’s report, that the deceased was an original director of the company, and that the 1st Defendant’s name appears in the records without supporting documentation. This raises serious questions as to the propriety of his shareholding. The Court of Appeal in *Mrao Ltd v First American Bank of Kenya Ltd & 2 others* [2003] KLR 125 defined a prima facie case as one that raises a genuine arguable issue for trial. I am satisfied that the Applicants have met this threshold.
14. On irreparable harm, the Applicants contend that substantial sums—about Kshs. 6,000,000—have already been consumed by the 1st Defendant, and that further dividends continue to be paid. While money is ordinarily compensable by damages, in this case, the payments are tied to disputed shareholding rights, and continuous depletion would prejudice the estate’s entitlement. In *Nguruman Ltd (supra)*, the court held that irreparable harm is that which cannot be adequately remedied by damages. I am persuaded that the Applicants stand to suffer such harm.
15. On the balance of convenience, I find that it favours preserving the estate’s alleged entitlement until the matter is heard and determined. If the injunction is denied, the estate risks permanent loss of benefits. On the other hand, if the injunction is granted and the 1st Defendant ultimately succeeds, withheld payments can be refunded.

Conclusion

16. Accordingly, the Applicants have satisfied the conditions for the grant of an interlocutory injunction.
17. Thus, the court issues the following Orders
 - i. An interlocutory injunction is hereby issued restraining the 1st Defendant, whether by himself, his agents or servants, from collecting, utilizing, or otherwise interfering with dividends and payouts from the 2nd Defendant pending the hearing and determination of this suit.
 - ii. The 2nd Defendant is restrained from releasing any dividends or payouts to the 1st Defendant pending the hearing and determination of this suit.
 - iii. The 2nd Defendant shall file in Court within sixty (60) days a full account of dividends and payouts issued in favour of the 1st Defendant from the year 2016 to date.



- iv. The 3rd Defendant is restrained from effecting any further changes in the shareholding and directorship of the 2nd Defendant pending the hearing and determination of this suit.
- v. Costs of the application shall abide the outcome of the main suit.
- vi. It is so ordered.

**DATED, SIGNED, AND DELIVERED AT NAROK THROUGH TEAMS APPLICATION, THIS
19TH DAY OF SEPTEMBER, 2025**

.....

CHARLES KARIUKI

JUDGE

