



**Muchungu v Registrar of Companies & another (Civil Suit E214 of 2023)
[2024] KEHC 5356 (KLR) (Commercial and Tax) (14 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5356 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL SUIT E214 OF 2023
FG MUGAMBI, J
MAY 14, 2024**

BETWEEN

JAMES NDWIGAH MUCHUNGU PLAINTIFF

AND

REGISTRAR OF COMPANIES 1ST RESPONDENT

HOUSE OF PROCUREMENT LTD 2ND RESPONDENT

RULING

1. This ruling determines the application dated 16th May 2023, which is brought under the provisions of Order 40 rule 1,2,4 and 10 the Civil Procedure Rules, and section 63 of the *Civil Procedure Act*.
2. The application seeks injunctive reliefs against the respondents from transferring any shares in the 2nd respondent Company and from disposing off any of the company's properties of whatever nature and further freezing all company accounts held at Kingdom Bank Ltd and Kenya Commercial Bank Ltd.
3. The application is supported by the supporting affidavit of the applicant, formerly a director and shareholder of Meridian Acceptances Limited (Meridian), sworn on 16th May 2023. It is the applicant's case that he was illegally and fraudulently removed as director of the said company and replaced by the 2nd respondent with the help of the 1st respondent. Upon being appointed, the 2nd respondent purported to hold an illegal special AGM of Meridian. The applicant claims to have been sidelined from company operations.
4. The application is opposed by way of a replying affidavit sworn by BENARD ODOTE, the 2nd respondent's Managing Director on 31st May 2021. The 2nd respondent's case is that it is a distinct entity from Meridian with no authority to act as an agent of the said company.



5. The 2nd respondent further avers that the present application is sub judice by dint of Milimani HCC No. 743 of 2021 whereby this Court issued a prohibitory order against the applicant from conducting business on behalf of the Company pending the hearing and determination of the suit.

Analysis

6. The Court has carefully considered the pleadings, submissions, the evidence and authorities presented by adverse parties. On the question of sub judice. A cursory look at the record confirms that a suit was filed by Meridian against the applicant in HCCC E743/2021. Vide a ruling dated 3rd November 2021 this Court allowed an application by Meridian against the applicant and granted injunctive orders.
7. In part, the orders were to restrain the applicant from conducting any business on behalf of Meridian pending the hearing and determination of the suit. While the said suit and application in HCCC E743/2021 was between the applicant and Meridian, the orders there have an effect on this matter.
8. The injunctive orders sought by the applicant herein would render the injunctive orders already in place in HCCC E743/2021 contradictory and counterproductive as the applicant has already been enjoined from conducting any business on behalf of Meridian. In any case, and intriguingly, the applicant has brought this action against the 2nd respondent as the alleged illegal directors appointed to Meridian, yet in the application before Court he proceeds to seek orders against Meridian itself, without naming Meridian as a party to the suit.
9. It is a trite concept of law that all parties necessary for the effectual determination of a dispute should be joined to any proceedings. This Court has pronounced itself in *Kizito M Lubano V KEMRI Board of Management & 8 Others*, [2015] eKLR and in *Werrot and Company Ltd & Others V Andrew Douglas Gregory & Others*, [1998] eKLR amongst other decisions.
10. The effect of these pronouncements is that orders should not be made against non-parties to a suit as was held in *Reuben Indiatsi Nasibi V Alfred Machayo & 2 Others*, [2012] eKLR. This principle holds particularly true within the adversarial framework governing our legal system.
11. Consequently, the applicant's attempt to obtain orders impacting Meridian, whilst simultaneously implicating the 2nd respondent as a director thereof, is untenable. This Court aligns with the argument advanced by the 2nd respondent in this respect that Meridian and the 2nd respondent are separate legal entities.

Disposition

12. For the reasons that I have stated, the application dated 16th May 2023 lacks merit. It is struck out and with costs to the respondents.

DATED, SIGNED AND DELIVERED IN NAIROBI

THIS 14TH DAY OF MAY 2024.

F. MUGAMBI

JUDGE

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