



**Willistone Homes Limited v Stanbic Bank Ltd & another (Civil Case E213 of 2024)  
[2024] KEHC 5768 (KLR) (Commercial and Tax) (16 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5768 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL CASE E213 OF 2024  
JWW MONG'ARE, J  
MAY 16, 2024**

**BETWEEN**

**WILLISTONE HOMES LIMITED ..... PLAINTIFF**

**AND**

**STANBIC BANK LTD ..... 1<sup>ST</sup> DEFENDANT**

**VICTOR COSMUS MUUSYA ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. On 25<sup>th</sup> April 2024, the Applicant, Willstone Homes Limited, by a Notice of Motion application filed under Order 51 Rule 1 & 3 of the [Civil Procedure Rules](#) and Section 3A of the [Civil Procedure Act](#) moved this Honourable Court seeking the following orders:-
  1. Spent
  2. Spent
  3. That pending the hearing and determination of the main suit, this Honourable court be pleased to order the Defendant to allow Ejidio Kinyanjui Gitau the director of the Plaintiff to be one of the signatories of the Bank accounts held by the Plaintiff at the offices of the Defendant with the mandate of any two signatories to sign.
  4. That pending the hearing of the main suit, this Honourable Court be pleased to order the Defendant to allow the Plaintiff to make payments for Land Reference number 8380/13 with Ejidio Kinyanjui Gitau the director of the Plaintiff being one of the signatories to effect the payment.



5. That this Honourable Court be pleased to order the Defendant to implement and effect the Board resolution of the Plaintiff dated the 19<sup>th</sup> April 2024.
  6. That pending the hearing and determination of the main suit, this Honourable Court be pleased to issue orders to allow the Plaintiff to effect payment of salaries and urgent payments with Ejidio Kinyanjui Gitau the Director of the Company being one of the Signatories.
  7. That the costs of this Application be provided for.
2. The application was premised on the grounds set on its face and the supporting affidavits of Ejidio Kinyanjui Gitau and Patrick Thuo Marigi of 25<sup>th</sup> April 2024.
  3. The Court considered the Application ex-parte and issued directions for inter-parte hearing on 30<sup>th</sup> April 2024. When the parties appeared before the Court and at the suggestion of the Defendant, directions were issued for the amendment of the Application to enjoin the 2<sup>nd</sup> Defendant, being one of the current signatories to the bank accounts of the Plaintiff at the 1<sup>st</sup> Defendant bank.
  4. Subsequently and on 2<sup>nd</sup> May 2024, the suit and the Notice of Motion was amended and the 2<sup>nd</sup> Defendant made a party to the suit. Both Defendants filed their responses to the Application. Parties appeared before the court on 13<sup>th</sup> May 2024 and made oral submissions.
  5. It is the Applicant's submission that this suit was necessitated by the refusal to accept to implement a Company Resolution of the Plaintiff to include as signatory Ejidio Kinyanjui Gitau as a signatory to the Plaintiff's Accounts with the 1<sup>st</sup> Defendant. The Plaintiff being a limited liability, has two shareholders with Ejidio Kinyanjui Gitau being the only director of the Plaintiff and the only natural shareholder of the Plaintiff Company while the 2<sup>nd</sup> Defendant and Patrick Thuo Maingi are directors and shareholders of the second shareholder of the Plaintiff, Diamond Transfer Limited and are the current signatories of the Plaintiff's Account.
  6. The 1<sup>st</sup> Defendant, out of an abundance of caution, and noting the Board Resolution was introducing a shift from the existing governance instruments held by it, advised the Applicant to move the court for orders to allow it implement the proposed changes. It is the 1<sup>st</sup> Defendant refusal to implement the Board Resolution of the Plaintiff that necessitated the filing of the present suit.
  7. The 2<sup>nd</sup> Defendant upon being served, has equally filed a response. During the hearing of the Application the 2<sup>nd</sup> Defendant did not dispute the validity of the Company Resolution introducing the Ejidio Kinyanjui Gitau as a signatory to the Bank Accounts but appeared to raise issues of management conflicts within the Company as reasons for opposing the Application.
  8. The *Companies Act* was conceived to give life to corporate bodies such as the Plaintiff from conception to their demise through winding up and requires that Company business be conducted in line with said Act. The *Companies Act* envisions that business of the Company would be conducted within the confines of the law and that decisions emanating from the same would be communicated to third parties by way of Company Resolutions.
  9. Having carefully considered the pleadings filed and the rival submissions made by the parties, I note that the Plaintiff, in line with the *Companies Act* did communicate to the 1<sup>st</sup> Defendant its desires to alter the signing mandate and include its director as a signatory, alongside the existing signatories to the Bank Accounts of the Plaintiff. I note that the 2<sup>nd</sup> Defendant who is one of the two signatories did not find any fault with the Board Resolution and that the other signatory, Patrick Thuo Marigi, swore an affidavit in support of the move to add a new signatory to the bank Account.



10. I note that the present application has been filed under Section 3A of the [Civil Procedure Act](#) which enjoins the court to apply the law in the interest of justice. Section 3A provides as follows:-

3A- Saving of inherent powers of court.

i. Nothing in this Act shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.

11. I have considered the arguments put forward by the Plaintiff and the responses by the Defendants. I note that the 1<sup>st</sup> Defendant has stated that it will abide with whatever orders the court makes and takes a neutral position in the internal affairs of the Plaintiff. I also note that the 2<sup>nd</sup> Defendant does not deny the existence of the Company Resolution of 19<sup>th</sup> April 2024, enjoining the Bank to include Ejidio Kinyanjui Gitau as a signatory to the Plaintiff's Bank Accounts alongside the present signatories with the Signing Mandate being two signatories to sign. The 2<sup>nd</sup> Defendant is not being removed from his role as a signatory and I am therefore satisfied that he will suffer no prejudice if the said resolution is implemented.

12. I am satisfied therefore the present application has merit and I shall allow it in its entirety. The 1<sup>st</sup> Defendant is directed to comply with the wishes of the Plaintiff and implement the Board Resolution presented to it and dated 19<sup>th</sup> April 2024 and allow the Plaintiff to operate its accounts in line with the said Company resolutions.

13. Each party shall bear their own costs of this application. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 16<sup>TH</sup> DAY OF MAY, 2024.**

.....

**J.W.W. MONG'ARE**

**JUDGE**

In the Presence of:-

Mr. Odanga for the Plaintiff.

Mr. Mwai Muthini holding brief for Kabaiku for the 1<sup>st</sup> Defendant.

Mr. Kimutai for the 2<sup>nd</sup> Defendant.

Amos - Court Assistant

