



**Gitau v Central Bank of Kenya & 3 others; Shah & 41 others (Proposed Plaintiffs);  
Cargo Distributors Limited & 26 others (Proposed Interested Parties) (Commercial Case  
E154 of 2022) [2024] KEHC 8645 (KLR) (Commercial and Tax) (11 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8645 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL CASE E154 OF 2022**

**MN MWANGI, J**

**JULY 11, 2024**

**BETWEEN**

**WILLIAM KABOGO GITAU ..... PLAINTIFF**

**AND**

**THE CENTRAL BANK OF KENYA ..... 1<sup>ST</sup> DEFENDANT**

**ROSE DETHO ..... 2<sup>ND</sup> DEFENDANT**

**KENYA DEPOSIT INSURANCE CORPORATION ..... 3<sup>RD</sup> DEFENDANT**

**CHARTERHOUSE BANK LIMITED ..... 4<sup>TH</sup> DEFENDANT**

**AND**

**ANKOOR SHAH ..... PROPOSED PLAINTIFF**

**WORLD SHELTER LIMITED ..... PROPOSED PLAINTIFF**

**GUNTER & GOLDBERG LIMITED ..... PROPOSED PLAINTIFF**

**PEPE LIMITED ..... PROPOSED PLAINTIFF**

**MEHRAZ ESANI ..... PROPOSED PLAINTIFF**

**LEILA EHSANI ..... PROPOSED PLAINTIFF**

**MAGNOLIA HILLS LIMITED ..... PROPOSED PLAINTIFF**

**FARZAM RIAZ ..... PROPOSED PLAINTIFF**

**ELIKA MAHONY ..... PROPOSED PLAINTIFF**

**JALEH EHSANI FAROKRY ..... PROPOSED PLAINTIFF**

**CONTINENTAL BOARD OF COUNSEL ..... PROPOSED PLAINTIFF**



NARMADABEN M SHAH ..... PROPOSED PLAINTIFF  
MANISHKUMAR RAMNIKLAL SHAH, MANOJKUMAR RAMNIKLAL SHAH  
AND SANJAYKUMAR RAMNIKLAL SHAH (SUNG AS ADMINISTRATOR OF  
THE ESTATE OF PUSHPA RAMNIKLAL SHAH) ..... PROPOSED PLAINTIFF  
FARANAK EHSANI ..... PROPOSED PLAINTIFF  
RAJESHWAR HARISANS BAI ..... PROPOSED PLAINTIFF  
DR SUNIL DHALI ..... PROPOSED PLAINTIFF  
PATEL ASHIT KUMAR ..... PROPOSED PLAINTIFF  
PATEL NISHIT KUMAR ..... PROPOSED PLAINTIFF  
LIFESTYLE RENOVATORS LIMITED ..... PROPOSED PLAINTIFF  
DALBIT PETROLEUM LIMITED ..... PROPOSED PLAINTIFF  
GLOBAL BRANDS KENYA LIMITED ..... PROPOSED PLAINTIFF  
ANANDI VIPIN SHAH ..... PROPOSED PLAINTIFF  
HINAL ASHOK SHAH ..... PROPOSED PLAINTIFF  
SAWAN RAJENDRA SHAH ..... PROPOSED PLAINTIFF  
NIKHIL VIPIN SHAH ..... PROPOSED PLAINTIFF  
NILIMA RAJENDRA SHAH ..... PROPOSED PLAINTIFF  
WOW BEVERAGES LIMITED ..... PROPOSED PLAINTIFF  
VEERAJ MAHESH RUGHANI ..... PROPOSED PLAINTIFF  
MAHIR MAHESH RUGHANI ..... PROPOSED PLAINTIFF  
RAVI MAHESH RUGHANI ..... PROPOSED PLAINTIFF  
MR. & MRS MAHESH RUGHANI ..... PROPOSED PLAINTIFF  
DAVID JOHNSON (SUNG THROUGH SAMUEL MUREITHI MURIOKI  
UNDER A SPECIAL POWER OF ATTORNEY) ..... PROPOSED PLAINTIFF  
CRUCIAL PROPERTIES LIMITED ..... PROPOSED PLAINTIFF  
MAYFAIR INSURANCE LIMITED ..... PROPOSED PLAINTIFF  
FONES DIRECT LIMITED ..... PROPOSED PLAINTIFF  
PHONELINK LIMITED ..... PROPOSED PLAINTIFF  
D SHAH & VITHLANI ..... PROPOSED PLAINTIFF  
ODESYS ENTERPRISES ..... PROPOSED PLAINTIFF  
LIWEI YIN ..... PROPOSED PLAINTIFF  
MOHAMED FARHAN MOHAMED FIROSDIN ..... PROPOSED PLAINTIFF  
WILD DREAMS HOLIDAYS LIMITED ..... PROPOSED PLAINTIFF  
BAHA'L PUBLISHING AGENCY OF KENYA ..... PROPOSED PLAINTIFF

AND



**CARGO DISTRIBUTORS LIMITED ..... PROPOSED INTERESTED PARTY**  
**SUBHASH CHANDRA GUDKA ..... PROPOSED INTERESTED PARTY**  
**CRESCENT CONSTRUCTION LIMITED .... PROPOSED INTERESTED PARTY**  
**KHATIB ASHRAF ..... PROPOSED INTERESTED PARTY**  
**CABRO WORKS EA LIMITED ..... PROPOSED INTERESTED PARTY**  
**DEFTECH LIMITED ..... PROPOSED INTERESTED PARTY**  
**ANIKET PROPERTY & INVESTMENTS LIMITED .... PROPOSED**  
**INTERESTED PARTY**  
**V-MARKET CHOICE (K) LIMITED ..... PROPOSED INTERESTED PARTY**  
**ANIKET DILPUN SHAH ..... PROPOSED INTERESTED PARTY**  
**HIDDEN TREASURES BOOK WHOLESSELLERS LIMITED .... PROPOSED**  
**INTERESTED PARTY**  
**BOOKS FIRST LIMITED ..... PROPOSED INTERESTED PARTY**  
**MAINA & MAINA ADVOCATES ..... PROPOSED INTERESTED PARTY**  
**IMPULSE DEVELOPERS LIMITED ..... PROPOSED INTERESTED PARTY**  
**ESTHER NJERI GITAU ..... PROPOSED INTERESTED PARTY**  
**MINESH M SHAH ..... PROPOSED INTERESTED PARTY**  
**RAJUL M SHAH ..... PROPOSED INTERESTED PARTY**  
**NEIMA M SHAH ..... PROPOSED INTERESTED PARTY**  
**TRILOK VARIA BHAGWANJI ..... PROPOSED INTERESTED PARTY**  
**TEEVEE INSURANCE COMPANY LIMITED .... PROPOSED INTERESTED**  
**PARTY**  
**HIRJI KHIMJI BHIMJI ..... PROPOSED INTERESTED PARTY**  
**SEYANI BROTHERS & COMPANY LIMITED .... PROPOSED INTERESTED**  
**PARTY**  
**CHUNILAL KHIMJI SHAH ..... PROPOSED INTERESTED PARTY**  
**SHAH PUSHPABEN CHUNILAL KHIMJI .... PROPOSED INTERESTED PARTY**  
**BHAGCHAN RAISHI SHAH NISHA ..... PROPOSED INTERESTED PARTY**  
**SHAH SOBHAGCHAND RAISHI MEPA ..... PROPOSED INTERESTED PARTY**  
**FRESH 'N'JUICI LIMITED ..... PROPOSED INTERESTED PARTY**  
**BRAND IMPORTS LIMITED ..... PROPOSED INTERESTED PARTY**



## RULING

1. This ruling is in respect to various applications for joinder filed by proposed plaintiffs and intended interested parties pursuant to a ruling delivered by Lady Justice Chepkwony on 24<sup>th</sup> February, 2023. The said applications are listed hereunder –
  1. Notice of Motion dated 15<sup>th</sup> June, 2023 by Impulse Developers Limited & Esther Njeri Gitau, supported by an affidavit sworn on the same day by Esther Njeri Gitau, the 2<sup>nd</sup> proposed interested party. The application is brought on grounds that Impulse Developers Limited & Esther Njeri Gitau are depositors with the 4<sup>th</sup> defendant, thus they have an identifiable stake in this suit;
  2. Notice of Motion dated 15<sup>th</sup> June, 2023 by Cargo Distributors Limited, supported by an affidavit sworn on the same day by Esther Njeri Gitau, a Director of the proposed interested party. The application is brought on grounds that Cargo Distributors Limited is a depositor with the 4<sup>th</sup> defendant, thus it has an identifiable stake in this suit;
  3. Notice of Motion dated 15<sup>th</sup> June, 2023 by Rajeshwar Harisans Bai & Dr. Sunil Dhall, supported by an affidavit sworn on the same day by Rajeshwar Harisans Bai, an intended plaintiff. The application is premised on the fact that Rajeshwar Harisans Bai & Dr. Sunil Dhall are account holders with the 4<sup>th</sup> defendant, thus they should be allowed to participate in this suit as they have an identifiable stake in the 4<sup>th</sup> defendant's assets;
  4. Chamber Summons dated 16<sup>th</sup> June, 2023 by Faranak Ehsani, supported by an affidavit sworn on the same day by Faranak Ehsani, a proposed plaintiff. The application is premised on the fact that the applicant is an account holder with the 4<sup>th</sup> defendant, thus he has a direct interest in this suit and that the subject matter of this suit is similar to his claim, hence he should be joined to this suit;
  5. Chamber Summons dated 19<sup>th</sup> June, 2023 by Patel Ashit Kumar, supported by an affidavit sworn on the same day by the said applicant, a proposed plaintiff. The application is brought on grounds that Patel Ashit Kumar is a depositor of the 4<sup>th</sup> defendant, thus he has an identifiable stake in this suit;
  6. Chamber Summons dated 19<sup>th</sup> June, 2023 by Patel Nishit Kumar, supported by an affidavit sworn on the same day by the said applicant, a proposed plaintiff. The application is brought on grounds that Patel Nishit Kumar is a depositor of the 4<sup>th</sup> defendant, thus he shares similar interests and claim with the existing plaintiff, and the outcome of this suit will have a direct impact on his financial interests;
  7. Notice of Motion dated 19<sup>th</sup> June, 2023 by Liwei Yin, Mohamed Farhan Firozdin, & Wild Dreams Holiday Limited, supported by an affidavit sworn on the same day by Liwei Yin, one of the proposed plaintiffs. The application is brought on grounds that Liwei Yin, Mohamed Farhan Firozdin, & Wild Dreams Holiday Limited are depositors with the 4<sup>th</sup> defendant, thus they have an identifiable stake in this suit;
  8. Notice of Motion dated 19<sup>th</sup> June, 2023 by Trilok Varia Bhagwanji & Trevee Insurance Company Limited, supported by an affidavit sworn on the same day by Trilok Varia Bhagwanji, the 4<sup>th</sup> intended interested party. The application is brought on grounds that Trilok Varia



Bhagwanji & Trevee Insurance Company Limited operate and hold accounts with the 4<sup>th</sup> defendant, hence their presence shall assist this Court to adjudicate all the issues raised to finality;

9. Chamber Summons dated 20<sup>th</sup> June 2023 by Subhash Chandra Gudka, supported by an affidavit sworn on the same day by the applicant. The application is premised on grounds that Subhash Chandra Gudka is a depositor of the 4<sup>th</sup> defendant, thus he has a personal interest in the outcome of this matter that he ought to protect by being joined to this suit;
10. Notice of Motion dated 20<sup>th</sup> June, 2023 by Ankoor Shah. I did not trace the application on the CTS but the 1<sup>st</sup> and 2<sup>nd</sup> defendants referred to the said application in their replying affidavit.
11. Notice of Motion dated 20<sup>th</sup> June, 2023 by Crescent Construction Company Limited, Khatib Ashraf, Cabro Works E.A. Limited & Deftech Limited, supported by an affidavit sworn on the same day by Khatib Ashraf, the 2<sup>nd</sup> intended interested party. The application is premised on grounds that Crescent Construction Company Limited, Khatib Ashraf, Cabro Works E.A. Limited, & Deftech Limited are customers and/or depositors of the 4<sup>th</sup> defendant, thus they are entitled to refunds and/or payment of their funds with interest from the defendants. For this reason, they have an identifiable stake and interest in this suit;
12. Notice of Motion dated 21<sup>st</sup> June, 2023 by Narmadaben M. Shah, supported by an affidavit sworn on the same day by the applicant, a proposed plaintiff. The application is premised on the fact that Narmadaben M. Shah is a depositor with the 4<sup>th</sup> defendant, thus he has a direct interest in this matter whose subject matter is similar to his claim. For the said reason, his active participation in this suit will enable this Court to effectively and completely adjudicate on and settle all the questions involved in this suit;
13. Notice of Motion dated 21<sup>st</sup> June, 2023 by Pepe Limited, supported by an affidavit sworn on the same day by David Githui, the proposed plaintiff's General Manager. The application is premised on grounds that Pepe Limited is an account holder with the 4<sup>th</sup> defendant, hence it should be joined to this suit as a co-plaintiff to avoid multiplicity of suits and for the common questions of law and fact arising from this suit to be resolved;
14. Notice of Motion dated 21<sup>st</sup> June, 2023 by the Estate of the late Pushpa Ramniklal Shah, supported by an affidavit sworn on the same day by Manishkumar Ramniklal Shah, one of the Administrators of the Estate of the late Pushpa Ramniklal Shah. The application is premised on the ground that the applicant is an account holder with the 4<sup>th</sup> defendant, thus the applicant's active participation in these proceedings will help this Court in reaching a just and fair decision since the applicant has a stake in the 4<sup>th</sup> defendant's assets;
15. Notice of Motion dated 22<sup>nd</sup> June, 2023 by Mehrnaz Ehsani, Hamed Ehsani, Magnolia Hills Limited, Farzam Riaz, Erika Mahony, Jaleh Ehsani Farokry, Continental Board of Counsel and Leila Ehsani, supported by an affidavit sworn on the same day by Mehrnaz Ehsani, the 1<sup>st</sup> intended plaintiff. The application is premised on the fact that the applicants held accounts with the 4<sup>th</sup> defendant, thus allowing this application will avoid a multiplicity of suits pertaining to similar claims against the same parties;
16. Notice of Motion dated 10<sup>th</sup> July, 2023 by World Shelter Limited & Gunter & Goldberg Limited, supported by an affidavit sworn on the same day by Hon. John Harun Mwau, an official of the proposed plaintiffs. The applicants claim that they are account holders with the 4<sup>th</sup> defendant, and their claim is similar to that of the plaintiff in this suit. They also state



that their claims arise out of the same transaction, and the reliefs sought flow from the same transaction thus necessitating this application;

17. Notice of Motion dated 25<sup>th</sup> July, 2023 by Anandi Vipin Shah, Hinal Ashok Shah, Sawan Rajendra Shah, Nikhil Vipin Shah, & Nilma Rajendra Shah, supported by an affidavit sworn on the same day by Hinal Ashok an intended plaintiff. The applicants claim that they are former account holders with the 4<sup>th</sup> defendant, thus they have a direct interest in the matter and ought to be joined to this suit as plaintiffs;
18. Notice of Motion dated 25<sup>th</sup> July, 2023 by Chunilal Khimji Shah, Shah Pushpaben Chunilal Khimji, Bhangchand Raishi Shah Nisha, & Shah Sobhagchand Raishi Mepa, supported by an affidavit sworn on the same day by Chunilal Khimji Shah, an intended interested party. The applicants claim that they are depositors with the 4<sup>th</sup> defendant, thus their involvement in these proceedings will enable this Court to effectively and completely adjudicate upon and settle all the questions involved in this suit;
19. Chamber Summons dated 26<sup>th</sup> July, 2023 by Baha'i Publishing Agency Kenya, supported by an affidavit sworn on the same day by Lucy Imison, the Trust Secretary of the proposed plaintiff. The applicant claims that it is a former account holder of the 4<sup>th</sup> defendant, hence it has a direct interest in this matter, whose subject matter is similar to its claim, and for that reason, it should be joined to this suit;
20. Notice of Motion dated 26<sup>th</sup> July, 2023 by Minesh M. Shah, Rajul M. Shah, Neina M. Shah, supported by an affidavit sworn on the same day by Minesh M. Shah, an intended interested party. The application is premised on the fact that Minesh M. Shah, Rajul M. Shah, and Neina M. Shah are depositors with the 4<sup>th</sup> defendant holding fixed deposit and savings accounts, hence they have a direct interest in this matter and ought to be joined in this suit as interested parties;
21. Notice of Motion dated 26<sup>th</sup> July, 2023 by Dalbit Petroleum Limited supported by an affidavit sworn on 1<sup>st</sup> August, 2023 by Ruth Muhia, the intended plaintiff's Finance Manager. The application is anchored on the ground that the applicant is a depositor of the 4<sup>th</sup> defendant, thus has a stake in these proceedings whose outcome is likely to be for the benefit of protecting its deposits;
22. Chamber Summons dated 31<sup>st</sup> July, 2023 by Wow Beverages Limited, supported by an affidavit sworn on the same day by Robert Thinji Muriithi, a Director of the intended plaintiff company. The application is premised on the fact that Wow Beverages Limited previously known as Wines of the world Limited is a depositor of the 4<sup>th</sup> defendant, thus has a stake in these proceedings;
23. Chamber Summons dated 31<sup>st</sup> July, 2023 by Crucial Properties Limited, supported by an affidavit sworn on the same day by Nyawira Kariuki, the intended plaintiff's Director. The application is anchored on the ground that the applicant is a depositor of the 4<sup>th</sup> defendant, thus it has a stake in these proceedings whose outcome is likely to be for the benefit of protecting its deposits;
24. Notice of Motion dated 2<sup>nd</sup> August, 2023 by Hidden Treasures Book Wholesalers Limited & Books First Limited, supported by an affidavit sworn by Kareem Hasham, a Director of the proposed plaintiffs. The applicants claim that they hold accounts with the 4<sup>th</sup> defendant. That as a result, their claim is similar to the plaintiff's claim in this suit, thus they should be joined to this suit;



25. Notice of Motion dated 3<sup>rd</sup> August, 2023 by David Johnson (Suing through Samuel Mureithi Murioki under Special Power of Attorney), supported by an affidavit sworn on 10<sup>th</sup> July, 2023 by Samuel Mureithi Murioki the donee of a power of attorney by David Johnson. The applicant's application is premised on the fact that he is a depositor of the 4<sup>th</sup> defendant;
26. Notice of Motion dated 11<sup>th</sup> August, 2023 by Global Brands Kenya Limited, supported by an affidavit sworn on the same day by Dilpun Goviindi Shah, a Director of the intended plaintiff. The applicant claims that it is a customer of the 4<sup>th</sup> defendant, thus its active participation in these proceedings will assist this Court in reaching a just and fair determination as they have a stake in the 4<sup>th</sup> defendant's assets;
27. Notice of Motion dated 14<sup>th</sup> August, 2023 by Fones Direct Limited, Phonelink Limited, D. Shah & Vithlani, and Odesys Enterprises, supported by an affidavit sworn on the same day by Rupal Batuk Vithlani & Dilpun Goviindi Shah, the intended plaintiffs & Directors of the intended plaintiffs. The applications are based on the claim that the applicants are depositors with the 4<sup>th</sup> defendant, which means that they have interest that will be negatively affected in the event that they are not joined to this suit;
28. Notice of Motion dated 14<sup>th</sup> August, 2023 by Fresh 'N' Juici Limited & Brand Imports Limited, supported by an affidavit sworn on the same day by Dilpun Govindji Shah, a Director of the intended interested parties. The applicants claim that they are customers of the 4<sup>th</sup> defendant, thus their active participation in these proceedings will assist this Court in reaching a just and fair determination as they have a stake in the 4<sup>th</sup> defendant's assets;
29. Notice of Motion dated 22<sup>nd</sup> August, 2023 by Aniket Dilpun Shah, V-Market Choice, and Aniket Property & Investment Limited, supported by an affidavit sworn on the same day by Aniket Dilpun Shah, an intended interested party & Dilpun Govindji Shah the Director of Aniket Property & Investment Limited. The application is premised on the claim that Aniket Dilpun Shah, V-Market Choice, and Aniket Property & Investment Limited held accounts with the 4<sup>th</sup> defendant, hence their active participation in these proceedings will assist this Court in reaching a just and fair determination as they have a stake in the 4<sup>th</sup> defendant's assets;
30. Notice of Motion dated 23<sup>rd</sup> August, 2023 by Mr. & Mrs. Mahesh Rhugani, supported by an affidavit sworn on the same day by Mr. & Mrs. Mahesh Rhugani, proposed plaintiffs. The application is anchored on the claim that Mr. & Mrs. Mahesh Rhugani are depositors with the 4<sup>th</sup> defendant, thus they have a direct interest in this matter, whose subject matter is similar to its claim, and for that reason, they should be joined to this suit;
31. Notice of Motion dated 23<sup>rd</sup> August, 2023 by Mahir Mahesh Rhugani, supported by an affidavit sworn on the same day Mahir Mahesh Rhugani, a proposed plaintiff. The applicant claims that he is a depositor with the 4<sup>th</sup> defendant, thus he has a direct interest in this matter whose subject matter is similar to his claim, and for that reason, he should be joined to this suit;
32. Notice of Motion dated 23<sup>rd</sup> August, 2023 by Ravi Mahesh Rhugani, supported by an affidavit sworn on the same day by the applicant, a proposed plaintiff. The applicant claims that she is a depositor with the 4<sup>th</sup> defendant, thus she has a direct interest in this matter whose subject matter is similar to her claim, and for that reason, she should be joined to this suit;
33. Notice of Motion dated 23<sup>rd</sup> August, 2023 by Veeraj Mahesh Rhugani supported by an affidavit sworn on the same day by the applicant, a proposed plaintiff. The applicant claims to



be a depositor of the 4<sup>th</sup> defendant, thus he has a direct interest in this matter whose subject matter is similar to its claim. For that reason, he should be joined to this suit;

34. Notice of Motion dated 6<sup>th</sup> September, 2023 by Maina and Maina Advocates. I did not find the said application on the CTS but the 1<sup>st</sup> and 2<sup>nd</sup> respondents referred to their application in their replying affidavit. The said applicant filed written submissions in support of their application;
  35. Notice of Motion dated 6<sup>th</sup> September, 2023 by Hirji Khimji Bhimji seyani, supported by an affidavit sworn on the same day by the applicant, an intended interested party herein. The applicant claims that he is an account holder with the 4<sup>th</sup> defendant, thus he would be adversely affected by the prayers sought in this suit. In addition, that he has direct personal interest in the outcome of this suit;
  36. Notice of Motion dated 6<sup>th</sup> September, 2023 by Seyani Brothers & Company Limited, supported by an affidavit sworn on the same day by Hirji Khimji Bhimji Seyani, a Director of the intended interested party. The applicant claims that it holds an account with the 4<sup>th</sup> defendant, it has a great interest in this matter, thus it should be joined to these proceedings;
  37. Notice of Motion dated 21<sup>st</sup> September, 2023 by May Fair Insurance Limited, supported by an affidavit sworn on the same day by Joshua Chiira, the intended plaintiff's Managing Director. The applicant claims that it is an account holder with the 4<sup>th</sup> defendant, thus if joined to this suit it will facilitate a fast, expeditious and fair determination of all matters arising in this suit;
  38. Notice of Motion dated 25<sup>th</sup> September, 2023 by Lifestyle Renovators Limited, supported by an affidavit sworn by Elijah Okello Omullo, one of the proposed plaintiff's Directors. The application is premised on the claim that Lifestyle Renovators Limited is a depositor with the 4<sup>th</sup> defendant, which means that it has a direct interest in this matter, whose subject matter is similar to its claim. For the said reason, it should be joined to this suit; and
  39. Notice of Motion dated 2<sup>nd</sup> October, 2023 by Frashia Wangui Ngatia, & Lucy Wangari Mwangi, supported by an affidavit sworn on the same day by Lucy Wangari Mwangi, one of the intended plaintiffs. The applicants claim that they are account holders with the 4<sup>th</sup> defendant, and they are seeking similar reliefs as those sought in this suit and arising from similar facts. For the said reason, they should be joined to this suit.
2. In opposition to the said applications, the 1<sup>st</sup> and 2<sup>nd</sup> defendants filed a replying affidavit sworn on 31<sup>st</sup> January, 2024 by Kennedy Kaunda Abuga, the 1<sup>st</sup> defendant's General Counsel. The 3<sup>rd</sup> & 4<sup>th</sup> defendants filed a replying affidavit sworn on 29<sup>th</sup> January, 2024 by David Irungu, the General Manager Resolutions at the 3<sup>rd</sup> defendant company.
  3. The 1<sup>st</sup> and 2<sup>nd</sup> defendants' position is that the ruling of Lady Justice Chepkwony delivered on 24<sup>th</sup> February, 2023 only granted liberty to depositors of the 4<sup>th</sup> defendant who are willing to be joined as plaintiffs to these proceedings to apply for such joinder, therefore all applications which seek joinder as an interested party are improperly before this Court, hence they should be struck out. They averred that the some of the applicants have not demonstrated that they are account holders with the 4<sup>th</sup> defendant, thus their claims that they are depositors with the 4<sup>th</sup> defendant cannot be substantiated.
  4. It was stated by the 1<sup>st</sup> & 2<sup>nd</sup> defendants that in as much as the applicants seek joinder as a means of recovering their deposits held with the 4<sup>th</sup> defendant, some of their claims are time barred thus it serves no useful purpose for the said applicants to be joined to this suit. The 1<sup>st</sup> & 2<sup>nd</sup> defendants further stated that some of the applicants have opted to file complaints and/or statements of claim that are incompatible with these proceedings, thus they should not be joined to this suit on that account.



5. The 1<sup>st</sup> & 2<sup>nd</sup> defendants referred to the application dated 3<sup>rd</sup> August, 2023 filed by David Johnson (Suing through Samuel Mureithi Murioki under Special Power of Attorney), and contended that the Power of Attorney relied on by the parties therein is not registered as required by law, thus the said application is defective.
6. They also referred to the affidavit in support of the application dated 25<sup>th</sup> July 2023 seeking joinder of Anandi Vipin Shah, Hinal Ashok Shah, Sawan Rajendra Shah, Nikhil Vipin Shah, & Nilma Rajendra Shah and averred that it has been sworn by all parties but executed by only one of them, thus it is defective.
7. The 3<sup>rd</sup> and 4<sup>th</sup> defendants in opposition to the said applications averred that the applicants herein seek to join this suit so as to pursue a claim for refund of their deposits held at the 4<sup>th</sup> defendant together with interest and damages for economic losses, which claim is different from the plaintiff's in this suit, as the plaintiff herein seeks a myriad of prayers including but not limited to an order challenging the 1<sup>st</sup> defendant's decision to place the 4<sup>th</sup> defendant under liquidation.
8. The 3<sup>rd</sup> and 4<sup>th</sup> defendants further averred that the applicants herein ought to exhaust the avenue available to them as provided for under Sections 28(1) & 33 of the *Kenya Deposit Insurance Act* by lodging a claim for payment of their deposits by the 3<sup>rd</sup> defendant first. They contended that the applicants herein are just but a fraction of all the 4<sup>th</sup> defendant's depositors, thus if the Court were to grant the orders for refund sought, it would amount to preferential treatment for a portion of the depositors, and will also amount to this Court directing the 3<sup>rd</sup> defendant on how to perform its statutory functions.
9. The 3<sup>rd</sup> & 4<sup>th</sup> defendants asserted that in view of the fact that some of the proposed plaintiffs have filed their independent plaints, if the applications herein were to be allowed, the defendants will be required to file separate statements of defence for each plaint, leading to practical problems of handling the existing cause of action together with the numerous ones filed by the applicants herein.
10. The 3<sup>rd</sup> and 4<sup>th</sup> defendants stated that they do not object to the applicants herein being joined as interested parties and/or plaintiffs because if they are joined to these proceedings they will have an opportunity to follow the proceedings in relation to the plaintiff's claim challenging the placing of the 4<sup>th</sup> defendant under liquidation. The 3<sup>rd</sup> & 4<sup>th</sup> defendants stated that they oppose the applications made by the following applicants on grounds that they are not the 4<sup>th</sup> defendant's depositors, and they have not tendered any evidence confirming the same—
  - i. Forte Hardware and Accessories Limited;
  - ii. Junda Kanabar & Harshes Kanabar;
  - iii. Nadeem Sadiq Mohmood Sadiq;
  - iv. Tarum Kumar Satp Lumb;
  - v. Neera Bahl
  - vi. Sureshchandra P. Shah; and
  - vii. Sobhana Sureshchandra.
11. The instant application was canvassed by way of written submissions. I have considered the said submissions. I will not rehash the same but I will refer to them in my determination.



### **Analysis And Determination.**

12. I have considered the applications filed herein, the grounds on the face of the Motion as well as the affidavits filed in support thereof. I have also considered the replying and further affidavits by the defendants together with the written submissions by Counsel for the parties. The issue that arises for determination is whether the applicants herein should be joined to these proceedings –

### **Whether the applicants herein should be joined to these proceedings.**

13. Order 1 Rule 10(2) of the Civil Procedure Rules, 2010 provides that -

“The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”

14. The tests for determining an application for joinder of parties were restated by the Court in the case of *Kingori v Chege & 3 others* [2002] 2 KLR 243, where Nambuye, J (as she then was) outlined the guiding principles to be considered when an intending party is to be joined to proceedings are -

- i. He must be a necessary party;
- ii. He must be a proper party;
- iii. In the case of the defendant there must be a relief flowing from that defendant to the plaintiff;
- iv. The ultimate order or decree cannot be enforced without his presence in the matter; and
- v. His presence is necessary to enable the Court effectively and completely adjudicate upon and settle all questions involved in the suit.

15. In *Civicon Limited v Kivu Watt Limited & 2 others* [2015] eKLR, the Court when dealing with a similar application stated as follows -

“Again, the power given under the Rules is discretionary which discretion must be exercised judicially. The objective of these Rules is to bring on record all the persons who are parties to the dispute relating to the subject matter, so that the dispute may be determined in their presence at the time without any protraction, inconvenience and to avoid multiplicity of proceedings. Thus, any party reasonably affected by the pending litigation is a necessary and proper party, and should be enjoined... from the foregoing, it may be concluded that being a discretionary order, the court may allow the joinder of a party as a defendant in a suit based on the general principles set out in Order I rule 10 (2) bearing in mind the unique circumstances of each case with regard to the necessity of the party in the determination of the subject matter of the suit, any direct prejudice likely to be suffered by the party and the practicability of the execution of the order sought in the suit, in the event that the plaintiff should succeed. We may add that all that a party needs to do is to demonstrate sufficient interest in the suit; and the interest need not be the kind that must succeed at the end of the trial.”



16. It is worth noting that the present applications were filed as a result of a ruling delivered by Lady Justice Chepkwony on 24<sup>th</sup> February, 2023. In the said ruling, the Court considered whether allowing the application the subject of the said ruling would be tantamount to usurping the powers of the 3<sup>rd</sup> defendant and held that taking into account that this suit seeks to enforce depositors' rights to be reinstated of their deposits, it is inevitable that at some point, the determination of this suit will bear some financial obligations, thus any depositor willing to be joined as a plaintiff in this suit was at liberty to apply to the Court to be made a party. The Judge then directed the plaintiff to advertise the suit so as to notify willing depositors to be joined to the suit.
17. In light of the foregoing, it is my finding that in order for the applicants to be joined to this suit, all that they have to do is to demonstrate that they were the 4<sup>th</sup> defendant's depositors as at 23<sup>rd</sup> June, 2003 when the 1<sup>st</sup> & 2<sup>nd</sup> defendants issued Gazette Notices No. 4935 & 4936. It is worth noting that the 3<sup>rd</sup> and 4<sup>th</sup> defendants in their replying affidavit to the applications herein annexed a list of verified and confirmed depositors of the 4<sup>th</sup> defendant. This Court finds that in view of the fact that the 4<sup>th</sup> defendant is the custodian of the list of its depositors, any person who wishes to be joined to these proceedings must be in the list provided by the 3<sup>rd</sup> & 4<sup>th</sup> defendants, and any person who is not part of the said list is required to demonstrate through evidence that they were indeed depositors of the 4<sup>th</sup> defendant as at 23<sup>rd</sup> June, 2003 when the 1<sup>st</sup> & 2<sup>nd</sup> defendants issued Gazette Notices No. 4935 & 4936.
18. The 3<sup>rd</sup> & 4<sup>th</sup> defendants at paragraph 18 of their replying affidavits stated that they have no objection to the applicants herein being joined to these proceedings. In paragraph 20 of the said affidavits, they however objected to the following being joined to these proceedings-
- i. Forte Hardware and Accessories Limited;
  - ii. Junda Kanabar & Harshes Kanabar;
  - iii. Nadeem Sadiq Mohmood Sadiq;
  - iv. Tarum Kumar Satp Lumb;
  - v. Neera Bahl;
  - vi. Sureshchandra P. Shah; and
  - vii. Sobhana Sureshchandra.
19. On perusal of the applications herein, the list of verified and confirmed depositors annexed to the 3<sup>rd</sup> & 4<sup>th</sup> defendants replying affidavit as well as the list of persons and companies whom the 3<sup>rd</sup> & 4<sup>th</sup> defendants contend were not the 4<sup>th</sup> defendant's depositors as at the time the 4<sup>th</sup> defendant was placed under liquidation, I am satisfied that all the applicants herein were the 4<sup>th</sup> defendant's depositors as at 23<sup>rd</sup> June 2003 when the 1<sup>st</sup> & 2<sup>nd</sup> defendants issued Gazette Notices No. 4935 & 4936 placing the 4<sup>th</sup> defendant under liquidation.
20. The 1<sup>st</sup> & 2<sup>nd</sup> defendants contend that all the applicants who intend to join this suit as interested parties should not be allowed to join in the said capacity, as Lady Justice Chepkwony's ruling granted liberty only to parties wishing to join the suit as plaintiffs to do so. I am however of the considered view that nothing bars this Court from considering the applications filed by the interested parties to be joined to this suit, as this is a Court of competent jurisdiction and of equal status to Judge Chepkwony's Court. I therefore have the jurisdiction to consider the said applications on merits, which I have.
21. The defendants averred that some of the applicants should not be joined to this suit since their claims are time barred. While this Court appreciates that some of the applicant's claims may be time barred,



this is not an issue to be determined at this juncture, rather, it is one that will be determined on merits at the hearing and determination of this suit after the Court has considered and analyzed the evidence adduced by the parties, or at an earlier stage, upon application by the defendants. On the issue of whether the applicants' claims are different from the cause of action in this suit, this Court finds that this is not an issue for consideration at this stage.

22. Having considered the applications filed herein, I am satisfied that the said applicants have met the threshold of being joined as either plaintiffs or interested parties, as per the prayers sought, as they have identifiable stakes in these proceedings.
23. In the premise, this Court finds that the applications herein are merited. As a result, they are hereby allowed in the following terms –
  - i. An order is hereby issued directing that the applicants herein be joined to this suit as plaintiffs or interested parties, as per their respective prayers; and
  - ii. Each party shall bear its own costs.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 11<sup>TH</sup> DAY OF JULY, 2024. RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

**NJOKI MWANGI**

**JUDGE**

In the presence of:

Mr. Kassimu h/b for Mr. Ouma for the plaintiff

Ms Arora h/b for 1<sup>st</sup> & 2<sup>nd</sup> defendants

Mr. Muchiri for the 3<sup>rd</sup> and 4<sup>th</sup> defendants

Ms Wairanga for Ankoor Shah/Intended plaintiff

Ms Gitonga for World Shelter Ltd/Intended plaintiff

Ms Bundi h/b Mr. Gitonga for Gunta & Goldberg Ltd/Intended plaintiff

No appearance for Pepe Ltd

Ms Mary Muigai for Mehrnaz Esani

Leila Ehsani - proposed plaintiff

Magnolia Hills Ltd. - proposed plaintiff

Farzam Riaz - proposed plaintiff

Elika Mahony - proposed plaintiff

Jaleh Ehsani Farokry - proposed plaintiff

Continental Board of Counsel/proposed plaintiffs

Ms Odhiambo for Narmadaben M. Shah/proposed plaintiff

Mr. Momanyi h/b for Ms Nyabuto for Manishkumar

Ramniklal Shah, Mangkumar Ramniklal and Sanjaykumar Ramniklal Shah



proposed plaintiffs  
N/A for Faranak Ehsani  
N/A Rajeshwar Harisans Bai  
N/A for Dr. Sunil Ali  
Mr. Orenge h/b for Mr. Ng'ang'a for Patel Nashit Kumar & Patel Hasher  
Kimar/ proposed plaintiff  
Ms Achieng for Lifestyle Renovator/proposed plaintiff  
Mr. Walela h/b for Mr. Makau for Dalbit Petroleum Ltd/ intended 65<sup>th</sup> plaintiff  
N/A for Global Brands Kenya Ltd  
Ms Shabana Osman for Anandi Vipin Shah, Hinal Shok Shah, Sawan Rajendra  
Shah, Nikhil Vipin Shah, Nilima Rajendra Shah/proposed plaintiffs  
Mr. Lubeto for Now Beverages/ proposed plaintiff  
Ms Muleta for Veeraj Mahesh Rughani, Mahir Mahesh Rughani, Rari Maheshi  
Rughani, Mr & Mrs Mahesh Ruhghani/proposed plaintiffs  
N/A for David Johnson  
Mr. Lubeto h/b Mr. James Mbugua for Crucial Properties/intended plaintiff  
N/A for Mayfair Insurance Ltd/proposed plaintiff  
Mr. Yusuf for Fones/Direct Ltd, Phonelink Ltd & D Shah &Vithlani/proposed  
plaintiff  
Ms Olao h/b for Mr. Abubakar for Odesys Enterprises Ltd/proposed plaintiff  
Mr. Owino for Lumei Yin, Mohamed Farhan Mohamed Firodun & Wild  
Dreams Holidays/proposed plaintiff  
N/A for Bahal Publishing Agency of Kenya/proposed plaintiff  
N/A for Cargo Distributors Co. Ltd/proposed interested party  
N/A for Subhash Chandra Gudka/proposed interested party  
Mr. Ashford Mugwaku for Crescent Construction Co. Ltd, Khatib Ashraf,  
Cabro Works E.A Ltd, Deftech Limited/proposed plaintiffs  
N/A for Aniket Property & Investments Ltd/proposed interested parties  
N/A for V. Market Choice (K) Ltd  
N/A Aniket Dilpun Shah/proposed interested party  
Ms M. Nganga h/b Njoki Gachihi for Hidden Treasures & Books First  
Ltd/proposed plaintiffs  
Ms Munjougu for Maina & Maina Advocates for intended interested party  
N/A for Impulse Developers Ltd/proposed interested party



N/A for the Esther Njeri Gitau/proposed interested party

N/A for Minesh M. Shah/proposed interested party

N/A for Rajul M. Shah/proposed interested party

N/A for Neima M. Shah/Proposed interested party

N/A for Trilok Varia Bhagwanji/proposed interested party

N/A for Teevee Insurance Company Limited/proposed interested party

N/A for Hirji Khimji Bhimji/proposed interested party

N/A for Seyani Brothers Company Ltd/proposed interested party

Ms Gedion h/b for Mr. Kamunde for Chunilal Khimji Shah, Shah Pushpaben  
chunilal Khimji/ proposed interested party

**Bhagchan Raisha Shah/proposed interested parties**

Shah Sobhagchand, Raishi Mepa/proposed interested party

Ms P. Gakii for Fresh 'N' Juici Limited/proposed interested party

Braid Imports Ltd/proposed interested party

Ms B. Wokabi – Court Assistant.

Page 14 of 14 NJOKI MWANGI, J.

