



**LWK v JCW (Matrimonial Cause E078 of 2021)
[2024] KEHC 8813 (KLR) (Family) (18 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8813 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
MATRIMONIAL CAUSE E078 OF 2021
HK CHEMITEI, J
JULY 18, 2024**

BETWEEN

LWK APPLICANT

AND

JCW RESPONDENT

RULING

1. There are two sets of applications herein. The first application filed by the Respondent JCW and dated 17th November 2023 prays for orders that:-
 - (a) Leave be granted to the Respondent to file a notice of appeal against the ruling of this court dated 19th October 2023.
 - (b) There be stay of proceedings pending the hearing and determination of the intended appeal.
2. The application is supported by the Applicant’s affidavit sworn on the same date. He deponed that the reasons for the delay in filing the notice of appeal was because of factors beyond his counsels control and that the mistake of counsel should not be visited upon the client.
3. He said that the 15 days’ delay was not inordinate and that he believes he has a good and arguable appeal.
4. The Respondent has opposed the said application arguing that the same is meant to delay the progress of this matter and in particular the issues surrounding the Gichoya Development Company Limited. That the delay will give the Applicant the opportunity to change the character of the company especially the shareholding and the directorship.



5. The court directed the parties to file their submissions which they did and the court has perused the same and wishes not to reproduce them here.
6. The issue of whether to grant leave to file a notice of appeal as well as whether to grant stay pending appeal was well discussed in the case of *Salat V. IEBC* (2014) eKLR.
7. The same is an equitable remedy and discretionary. There must be cogent reasons and it ought for instance to have been brought without an inordinate delay.
8. I have looked at the application herein and I do not think the 15 days' delay is inordinate in the circumstances. I do not see any injury or harm to be suffered by the Respondent if the same is allowed.
9. I shall however decline stay of proceedings herein pending the intended appeal. There is no reason why this matter should not proceed as the issues relating to the company as discussed elsewhere herein are more less independent and generally distinct. This court may not have jurisdiction over it.
10. Considering the period this matter has taken I think it is not wise and prudent to elongate it further. The two parties herein ought to know the fate of their matrimonial assets.
11. I need not belabour on whether the appeal is arguable or not. That is the province of the appellate court.
12. The second application by the Applicant LWK is dated 13th December 2023 and is seeking the following orders,
 - (a) That this court be pleased to join Gichoya Development Company Limited as the 2nd Respondent in this matter.
13. The application is supported by the Applicant's affidavit sworn on even date and the grounds thereof.
14. The gist of the application is that the said company Gichoya development company limited incorporated on 21st January 2011 is a family company which owns some properties and which she is entitled to some shares.
15. She went and cited the orders of this court of 19th October 2023 which directed that the company be enjoined as a party to this suit.
16. It was her case that the Respondent has been dealing with the company in a manner that would defeat her interest as a shareholder and thus the need to have it included herein.
17. The Respondent has opposed the said application vide the replying affidavit sworn on 19th April 2024. He deponed that the object of the application was to defeat his application dated 17th November 2024 which he seeks to appeal against the ruling of this court.
18. That the application has taken a form of derivative suit which this court does not have the relevant jurisdiction. He went ahead to accuse the Applicant of failing the company and causing it not to meet its financial obligations and other objects in which it carries.
19. He accused the Applicant of freezing the companies accounts and further preventing him from disposing off his shares. He therefore prayed for the application to be dismissed.
20. The court directed the parties to file submissions which they have both complied and the court has perused the same.



21. What I find significant herein is whether the inclusion of the company as a party in this suit will bring out the issues clearly for determination. It is not disputed that the company is co-owned by the two parties in the ratio of 51:49.
22. There is also evidence that it owns some properties and other obligations as well as liabilities.
23. In my view therefore and whereas I agree with the Respondent that this court does not have jurisdiction to deal with company issues, its jurisdiction respectfully only covers the question of whether or not either party has shares therein and what is their level of contribution and whether or not it forms matrimonial property in the manner provided under the *Matrimonial Property Act*.
24. I do not think this court has jurisdiction to determine the daily operations of the company as provided under the Company's Act. The issue of shareholding, the rights of majority or minority shareholder, the question about AGM etc. are not within the mandate of this court. Based on the above observations therefore nothing stops the company from running its daily affairs as governed by the Companies' Act.
25. In other words, the objection raised by the Respondent should be raised in the proper court and not this one. The inclusion of the company as a party herein is simply to determine eventually whether it forms part of the matrimonial property as explained above.
26. Does the Respondent stand to suffer any loss? I do not think so. This is for the reasons stated above. No order has been issued stopping any dealings with the company. But I think for proper order and perspective and so as to assuage the parties that what the company has or does not have constitute matrimonial property it is necessary that it be brought in.
27. For the above reasons the court makes the following orders regarding the two applications:-
 - (a) The Applicant JCW is hereby granted leave to file and serve a notice of appeal within 14 days from the date herein in regard to the ruling of this court dated 19th October 2023.
 - (b) Gichoya Development Company Limited is hereby enjoined as the 2nd Respondent herein
 - (c) Costs of both applications shall be in the cause.

DATED SIGNED AND DELIVERED VIA VIDEO LINK THIS 18TH DAY OF JULY 2024.

H K CHEMITEI

JUDGE

