



**Channa v Channa; Channa Construction Limited & another (Affected Party); Nirmal Singh Channa (Interested Party) (Miscellaneous Civil Application E760 of 2021) [2023] KEHC 21125 (KLR) (Commercial and Tax) (21 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 21125 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
MISCELLANEOUS CIVIL APPLICATION E760 OF 2021  
DO CHEPKWONY, J  
JULY 21, 2023  
IN THE MATTER OF THE COMPANIES ACT, 2015**

**BETWEEN**

**MANDEEP SINGH CHANNA ..... APPLICANT**

**AND**

**SUPINDERPAUL SINGH CHANNA ..... RESPONDENT**

**AND**

**CHANNA CONSTRUCTION LIMITED ..... AFFECTED PARTY**

**CHANNA INVESTMENTS LIMITED ..... AFFECTED PARTY**

**AND**

**NIRMAL SINGH CHANNA ..... INTERESTED PARTY**

**RULING**

1. This ruling determines the Applicant's Originating Summons dated 11<sup>th</sup> May, 2022 which seek the following orders: -
  - a. Spent;
  - b. That the Applicant be authorized to negotiate directly with I & M Bank Limited on behalf of Channa Construction Limited and Channa Investment Limited on matters pertaining to the loan facility held by Channa Construction Limited with the said bank;



- c. That the Applicant be authorized to execute all necessary documents relating to the restructuring of the loan facility and seeking extension of time for payment of the loan facility held by Channa Construction Limited with I&M Bank Limited on behalf of Channa Construction Limited and Channa Investment Limited;
  - d. That the Applicant be authorized to seek for a buyer by way of private treaty for half of the property known as Land Number 11388/5 on behalf of Channa Construction Limited and Channa Investment Limited and to execute all necessary documents including sale agreements, share transfer forms, transfer documents and/or documents for sub-dividing the title document for the subject property in to two and all other requisite documents for purpose of perfecting the buyer's title to half of the subject property;
  - e. That the Applicant be authorized to open and operate a bank account on behalf of Channa Investments Limited for purposes concerned with the proposed sale of a portion of the property known as LR. No.11388/5 and he be authorized to fill out all necessary forms and applications, apply for cheque book and execute all necessary documents required by the bank on behalf of Channa Investments Limited;
  - f. The Applicant be authorized to retain the services of such professional consultants as surveyors, estate agents, valuers, advocates and any other necessary consultant and to pay their prescribed fees out of the sale proceeds that may be realized out of the sale of half of the property known as LR. No.11388/5;
  - g. That in the alternative to the prayers above, the court does issue suitable orders directing the Registrar of the Court to execute such documents as may be necessary for the purposes contained herein;
  - h. That the documents executed by the alone on behalf of Channa Construction Limited and Channa Investment Limited pursuant toto orders issued by this Honourable Court be binding on both Companies;
  - i. That this Honourable Court does issue such other orders as may be necessary in the circumstances;
  - j. That the costs of this application be borne by the Respondent.
2. The grounds adduced in support of application for the above prayers are that the Applicant and the Respondent are both Shareholders and Directors of Channa Construction Limited and Channa Investment Limited. That Channa Construction Limited secured loan facilities from I &M Bank Limited and secured the same by a charge over property LR. No. 11388/5 owned by Channa Investments Limited. As a result of mismanagement and misunderstanding between directors, Channa Construction Limited stopped its operation sometimes in the year 2021 and has since been unable to service the loan facility. The Bank was consequently prompted to issue a letter dated 28<sup>th</sup> April, 2022 warning to commence legal actions for recovery of the outstanding affairs.
  3. According to the Applicant, the respondent and the interested party are his co-directors in Channa Investment Limited but have failed to execute any documents concerning the two Companies especially the proposal to sell part of the secured property to offset the outstanding bank loan. He added that whereas the property is scheduled at Kshs.140 Million, the loan owed to the bank is approximately Kshs.52,000,000/=. That it would not be necessary to sell the entire property although the Respondent will not bend a knee unless the Applicant agrees to selling the entire property and for the proceeds be shared among the Directors of the Company. The Applicant added that he is the majority shareholder



- with 60% shareholding and his matrimonial home occupies half of the charged property. He therefore stands the risk of losing his home if the whole property is sold unlike the other directors who are unlikely to be prejudiced.
4. The Respondent opposed the application vide his Replying Affidavit sworn on 7<sup>th</sup> June, 2022. He deponed that he has been a Director of the two affected Companies and for thirty years since their incorporation, he has been working in the said Companies as an Oversight Engineer whilst the Applicant was appointed as the Finance and Administration Director. That Channa Investments Limited was incorporated as finance vehicle for Channa Construction Company and in the process, the property charged under the facilities in question was purchased. However, owing to disagreements with the Applicant on financial and operational issues of the Companies, the 1<sup>st</sup> affected Company was unable to serve its financial needs. The situation was made dire sometimes in 2014 when the Applicant altered the records to transfer 60% shareholding to himself. Aggrieved by that decision the Respondent filed Misc. E198 of 2018 seeking the shareholding to be restored to its initial status although the suit is still pending.
  5. The Respondent added that previously he had agreed with the Applicant to sell the subject property entirely to offset the bank loans then the surplus would be shared in line with shareholding ratio to be determined in Misc. E198 of 2018. The Applicant went ahead and wrote a proposal on the entire property which he presented to the bank but when he eventually realized that he would as well lose his house, he rushed to this Court seeking to satisfy his personal interests vide this suit. That besides the forgoing, the Applicant had previously attempted to force him sign an additional charge over the property and even filed a suit to that effect, but the request was declined by court on account that it would be unfair to burden someone with debts he is not willing to commit to.
  6. It was the Respondent's further case that the assertions by Applicant that he might be rendered homeless are misplaced since the Property belongs to the 2<sup>nd</sup> Affected Company which is at liberty to dispose its assets as need may arise. In addition to that, the occupation by the Applicant of the property was not sanctioned by the Company and he has been living in the house without paying rent or any other justification. The Respondent therefore craves for the application to be dismissed for want of merit.
  7. The application was canvassed orally by respective counsel for the parties on 9<sup>th</sup> June, 2022 with M/S Mwangi submitting on behalf of the Applicant while Mr. Mumia appeared for the Respondent. Both counsels reiterated the summary in the affidavits as reproduced above, hence this Court would not wish to highlight the same here.

### **Analysis and Determination**

8. Having carefully considered the arguments in the respective submissions by parties, alongside the rival dispositions in the affidavits, the contentious question and the key issue for determination is:-
  - a. whether the Applicant has established prima facie case to be allowed to renegotiate the subject loan facilities on behalf of the two Affected Companies; and if so,
  - b. whether to partially sell property known as LR. No. 11388/5 owned by Channa Investments Limited and execute the documents relevant thereof.
9. From the onset, it is a common ground that the two affected Companies are Limited Liability Companies, which in law are separate legal entities different from their shareholders and subscribers. With the formation of the Company, the new entity acquires a veil of incorporation that completely separates the members' from being held responsible for the liabilities of the Company which they



have subscribed to. This veil of incorporation blocks the members from being held liable for acts of the Company. One of the key characteristics of a Company registered as a separate legal person is its contractual capacity and the ability to own its property in perpetuity. As a result, the shareholders and or its Directors have no direct right or ownership to the full or any share of the Company's property and cannot deal with it in his/her personal capacity. Consequently, in this case, the Applicant cannot exercise direct control over property known as LR. No. 11388/5 which is owned by Channa Investments Limited, and any decision to sell or otherwise dispose of the property can only be made through a resolution but not individual decision of the Directors or any other shareholder.

10. What appears to be the case herein is that the Appellant seeks to protect his personal interests in the property LR. No. 11388/5 by seeking to sell a portion of it without the same being sanctioned by the Company.
11. It is this Court's view that a Director/Shareholder is only entitled to whatever price he can get for his/her shares in the Company. However, since the issue of shareholding is still in controversy in the instant suit, it would be an academic exercise for the court to venture into determining what portion in the parcel of land known as LR. No. 11388/5 should be sold or not be sold to avoid rendering the Applicant homeless or otherwise prejudicing him.
12. It is also clear in the pleadings that there exist an acrimonious relationship between the Directors with each blaming the other of mismanagement of the two affected Companies' assets. Whereas the Applicant does not dispute the averment by the Respondent on oath that they had agreed to sell the entire property to offset the outstanding facilities and share the proceeds in the shareholding capacity to be determined by the court, allowing the Applicant to renegotiate the sale of the property by himself would amount to stealing a match against the other directors in view of the acrimonious relationship inter-se.
13. The court has as well considered the present application in view of the orders granted in favour of the Applicant allowing him the window to file a derivative suit on behalf of the affected parties. Once the same is filed, the issues raised in the instant application will be addressed therein. But, in the meantime, the court finds that Applicant has failed to establish a prima facie case to warrant the grant of the orders being sought.
14. In the premises, the Originating Summons dated 11<sup>th</sup> May, 2022 is without merit and the court proceeds to dismiss the same with no orders as to costs.

It is so ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 21ST DAY OF JULY, 2023.**

**D. O. CHEPKWONY**

**JUDGE**

M/S Mwangi counsel for Applicant

Mr. Muchemi holding brief for Mr. Munia for Respondent

Court Assistant - Martin

