



**Chesoni & another v Ali & 3 others (Commercial Case E204 of 2022)
[2023] KEHC 24767 (KLR) (Commercial and Tax) (6 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 24767 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E204 OF 2022
MN MWANGI, J
OCTOBER 6, 2023**

BETWEEN

**ATSANGO NANCY CHESONI 1ST PLAINTIFF
MAUREEN INJETE CHESONI 2ND PLAINTIFF**

AND

**HASSANNOOR IMAN ALI 1ST DEFENDANT
OMAR ABDI HASSAN 2ND DEFENDANT
LUKE KIMUTAI 3RD DEFENDANT
REGISTRAR OF COMPANIES 4TH DEFENDANT**

RULING

1. On 7th July, 2022, the plaintiffs filed a suit against the defendants vide a plaint dated 6th June, 2022 seeking *inter alia*, a declaration that the changes effected to allot the 1st, 2nd & 3rd defendants shareholders and Directors of the company Midway Ventures Limited are fraudulent and therefore null and void *ab initio*; an order directing the 4th defendant, the Registrar of Companies to forthwith cancel the fraudulent allotment of 1 share each to the 1st, 2nd & 3rd defendants purportedly effected by a notification of change of directors and secretaries dated 31st December, 2009 and that an order be issued directing the 4th defendant to cancel forthwith the particulars of the 1st, 2nd & 3rd defendants as Directors/shareholders to the company with each one ordinary share and revoke the irregular notification of change of directors dated 31st December, 2009 and subsequent changes.
2. The plaint was accompanied by a Notice of Motion application dated 6th June, 2022 filed under certificate of urgency pursuant to the provisions of Sections 1A, 1B & 3A of the [Civil Procedure Act](#),



Order 51 Rule 1 of the [Civil Procedure Rules, 2010](#), Section 103 of the [Companies Act](#) No 17 of 2015 and all other enabling statutes. The plaintiffs seek the following orders -

1. Spent;
 2. That pending the hearing and determination of the application inter partes, the Court be pleased to issue a temporary injunction restraining the 1st, 2nd & 3rd respondents herein whether by themselves or their servants or agents, proxies, or Advocates or any of them from doing any of the following acts that is to say, further transferring any shares in the company, disposing of, alienating and/or selling any of the company's properties of whatever nature and more specifically the company's parcel of land LR No 209/12610;
 3. That pending the hearing and determination of the application inter partes, the Court be pleased to issue a temporary injunction restraining the 4th respondent herein whether by himself or their servants or agents, proxies, or Advocates or any of them from doing any of the following acts that is to say, registering the transfer of any shares in the company and/or altering the structure of the company or otherwise dealing with the register of the company at the companies registry; and
 4. Costs of this application be provided.
3. The instant application is supported by the grounds on the face of the Motion and is supported by an affidavit sworn on 3rd June, 2022 by Atsango Nancy Chesoni the 1st plaintiff herein. It is noteworthy that when this matter came up for mention for directions on 19th June, 2023, the 4th defendant's Counsel indicated that the 4th defendant would rely on its replying affidavit in opposition to the instant application. The said replying affidavit is however missing in the physical file and on the Case Tracking System (CTS). The 1st, 2nd & 3rd defendants on the other hand have never entered appearance in this matter hence they did not participate in this application.
 4. The application herein was canvassed by way of written submissions. The plaintiff's submissions were filed by the law firm of Prof. Albert Mumma & Company Advocates on 30th November, 2022. The 4th defendant did not file any written submissions.
 5. Prof. Albert Mumma (SC), learned Counsel for the plaintiff relied on the provisions of Order 40 Rule 1 of the [Civil Procedure Rules, 2010](#) and the case of *Giella v Cassman Brown & Co. Ltd* [1973] EA 358 cited by the Court of Appeal in the case of [National Bank of Kenya Ltd & 2 others v Sam-Con Ltd](#) [2003] eKLR, where the Court laid down the principles to be considered by a Court when dealing with an application for temporary injunction. He submitted that the plaintiffs have met the threshold for issuance of an order for injunction. He relied on the case of [Mrao Ltd v First American Bank of Kenya Ltd](#) [2003] eKLR and submitted that the plaintiffs have established that they have a *prima facie* case against the defendants by virtue of the fact that the 1st, 2nd & 3rd defendants fraudulently transferred shares of Midview Ventures Limited thus infringing on the plaintiffs' rights. He stated that as a result, the status and the shares of the subject company require urgent and immediate preservation from further interference.
 6. Senior Counsel stated that a Notice of Change of Directorship was purportedly filed by the firm of R.R Vora A.C.I.S CPS(K), but the late Mary Aherwa Chesoni and/or Nelson Khakame Chesoni never instructed the said firm to effect any changes on behalf of Midview Ventures Limited. He also stated that it is evident from the record at the Companies' Registry that the firm of B.A. Ouma & Associates Advocates facilitated the transfer of shares on two separate occasions but the said firm of Advocates has denied having any sort of knowledge or connection with the respondents. He contended that no



proper documentation has been produced by the 1st, 2nd & 3rd defendants explaining the variance and inconsistency in changes in the shareholding of Midview Ventures Limited thus raising reasonable suspicion that the transfer of shares was done fraudulently and/or through collusion of the 1st, 2nd & 3rd defendants.

7. Prof. Albert Mumma (SC) stated that in the event that the orders sought in the application herein are disallowed, the plaintiffs will suffer irreparable harm since the 1st, 2nd & 3rd defendants might dispose of the shares and/or sell off the company's major properties before this Court makes a final determination on the dispute between the parties herein, thus rendering the said determination an academic exercise. To this end, Senior Counsel relied on the case of *Abdulmalik Thomas Matee Nzomo v Tabitha Katile Kawizi & 2 others* [2022] eKLR, where the Court quoted the case of *Nguruman Limited v Bonde Nielsen & 2 others* [2014] eKLR.
8. Senior Counsel submitted that the plaintiffs have filed the suit herein in their capacity as personal representatives of the estate of the late Mary Aherwa Chesoni and as such, the subject company being an inheritance is of great sentimental value to the entire estate of Mary Aherwa Chesoni and Nelson Khakame Chesoni. He posited that for the said reason, monetary compensation would not be an adequate remedy to the loss suffered by the plaintiffs, in the event the application herein is not allowed.
9. He submitted that the 1st, 2nd & 3rd defendants' actions violate the plaintiffs' right to own property as enshrined under Article 40 of the *Constitution* of Kenya, 2010. He further submitted that the balance of convenience tilts in favour of the plaintiffs as together with the beneficiaries of the estate of the late Mary Aherwa Chesoni and Nelson Khakame Chesoni, they stand to suffer loss of their property in a fraudulent manner.

Analysis and Determination.

10. I have considered the application herein, the grounds on the face of it and the affidavit in support thereof, and the written submissions by Counsel for the plaintiffs. The issue that arises for determination is whether the orders being sought by the plaintiffs herein can be granted.
11. The plaintiffs in their supporting affidavit sworn by the 1st plaintiff deposed that Midway Ventures Limited (hereinafter referred to as "the company") was incorporated on 22nd July, 1996 with the original Directors and shareholders being Philip John Ransley and Zehrabanu Janmohamed.
12. She averred that sometime in the year 2006, Philip John Ransley and Zehrabanu Janmohamed resigned as Directors and shareholders of the company. Thereafter, the 1st plaintiff's mother, the late Mary Aherwa Chesoni and her deceased uncle Nelson Khakame Chesoni acquired 50% shares of the company from Philip John Ransley and the other 50% shares of the company from Zehrabanu Janmohamed. The registration of the transfer of shares was done through the law firm of B.A. Ouma & Associates Advocates.
13. The 1st plaintiff further averred that on 25th October, 2007, the Registrar of Companies was notified by the law firm of B.A. Ouma & Associates Advocates of the change of Directors and shareholders vide a Notice of Change duly signed by Zehrabanu Janmohamed. The 1st plaintiff deposed that the annual returns filed on 31st December, 2007 did not reflect the aforementioned changes which prompted the law firm of B.A. Ouma & Associates to write to the 4th defendant vide a letter dated 5th June, 2008 inquiring whether the changes of the company's directorship and shareholding had been effected. The 4th defendant vide a letter dated 11th September, 2008 responded indicating that the said changes were yet to be effected since Philip John Ransley and Zehrabanu Janmohamed were still listed as the company's Directors and shareholders.



14. It was stated by the 1st plaintiff that its current Advocates on record conducted a search of the company at the Company's Registry sometime in the year 2018 and the results still showed that Philip John Ransley and Zehrabanu Janmohamed were the company's Directors and shareholders. The 1st plaintiff deposed that this prompted a 2nd search which was done on 13th January, 2022 and the results of the said search indicated that the 1st, 2nd & 3rd defendants were listed as the Directors and owners of the company.
15. The 1st plaintiff deposed that their current Advocates on record visited the Companies' Registry to peruse the company's file and upon perusal, they found that on 12th November, 2011, the firm of R.R. Vora A.C.I.S CPS (K) notified the 4th defendant that the late Mary Aherwa Chesoni and Nelson Khakame Chesoni allegedly voluntarily resigned from the company as Directors and returned their shares to the company with effect from 12th November, 2011.
16. The 1st plaintiff averred that the purported allotment of the company's shares to the 1st, 2nd & 3rd defendants was not only done fraudulently but it was also null and void since if such allotment was to be done, it would have been done by Philip John Ransley who was the then Company Secretary which is not the case herein. She further averred that it was also evident from the perusal that from the year 2010 to 2017 all the company's returns submitted by the law firm of B.A. Ouma & Associates Advocates indicated that the 1st and 2nd defendants were the Directors and shareholders of the company.
17. The 1st plaintiff deposed that the plaintiffs' Advocates on record wrote to the law firm of B.A. Ouma & Associates Advocates to verify whether they filed the said returns but the said firm of Advocates responded and stated that the 1st, 2nd & 3rd defendants are strangers to them and that they did not file the company's returns for the years 2010 to 2017.
18. The 1st plaintiff asserted that their Advocates on record also found a letter dated 10th November, 2020 addressed to the 4th defendant by the 2nd defendant requesting for a certified copy of the company's certificate of incorporation and the plaintiffs were apprehensive that the 1st, 2nd & 3rd defendants may fraudulently and/or unlawfully deal with the company's property.

Whether the orders being sought by the plaintiffs herein can be granted.

19. I have duly considered the orders being sought in the application herein, and it is my finding that the said orders cannot be granted as the application is already spent. It would be superfluous to grant the orders being sought since the applicants' prayer is for orders of a temporary injunction against the defendants "pending the hearing and determination of the application inter partes". I am guided by the holding in the case of *Catherine Njeri Macharia v Macharia Kagiob & another* [2013] eKLR, where when the Court was faced with similar circumstances stated as follows -

"I accept and approve the holding by Hon. Justice Lesiit in HCCC No 329 of 2003 *Ano Shariff Mohammed v Abdulkadir Shariff Abdirabim* and Hon. Justice Fred Ochieng in HCCC No 2047 of 2000 *Wilfred O. Musingo v Habo Agencies Ltd* where my colleague judges were faced with applications seeking prayers similar in wording as in the instant application by the plaintiff. Justice Lesiit rendered herself as follows in the case referred to:

"The prayer seeks a stay of execution of decree pending the hearing and determination of this application. The issue is that once the application is heard and determined then what. I do not think the prayer is worded correctly as the stay of execution should be prayed pending something other than the application



itself. Considering this prayer and the manner it is worded, it is my view that the entire application is spent and that there remains nothing for me to stay”.

For his part Hon. Justice Ochieng rendered himself thus: -

“Now I revert to the orders sought by the Defendant. First it seeks an order of stay of execution pending the hearing and determination of this application. In other words, the very moment the court will have heard and determined the application dated 27th September, 2005 there would be no orders for stay of execution. Therefore, even if I were to grant prayer 2 as prayed, it would lapse as soon as I finish reading this ruling. As on 28th October, 2005, I had already given an order staying execution until today.

I hold that there is no need for the court to grant another order whose purport and effect would be the same as that which has already been given”.

20. In the end, and due to the style in which prayers Nos. (2) and (3) in the instant application were drafted, this Court finds that the application dated 6th June, 2022 is spent and it is hereby marked as spent. Costs of the application shall abide the outcome of the main suit.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT NAIROBI ON THIS 6TH DAY OF OCTOBER, 2023.
RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

NJOKI MWANGI

JUDGE

In the presence of:

No appearance for the plaintiffs

No appearance for the defendants

Ms B. Wokabi – Court Assistant.

