



**Nyasimi v Green Mango Investment Limited & another (Commercial Case E447 of 2019)  
[2024] KEHC 15898 (KLR) (Commercial and Tax) (16 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15898 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL CASE E447 OF 2019  
JWW MONG'ARE, J  
DECEMBER 16, 2024**

**BETWEEN**

**ROBERT KANDA NYASIMI ..... PLAINTIFF**

**AND**

**GREEN MANGO INVESTMENT LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**RENTWORKS EAST AFRICA LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

**Introduction and Background**

1. By a Plaint dated 9<sup>th</sup> December 2019, the Plaintiff filed the present suit stating that sometime in 2004, he was employed by the 2<sup>nd</sup> Defendant (“Rentworks”) as a Business Development Manager and that in 2010, Rentworks resolved to restructure its shareholding through the sale and transfer of a portion of its shares and it identified the shares held by the 1<sup>st</sup> Defendant (“Green Mango”) as those to be sold. Green Mango offered the Plaintiff 5% of its ordinary shares (“the Shares”) held in Rentworks for a sum of USD 62,5000 (“the purchase price”) which offer was accepted by the Plaintiff and the parties executed a Share

**Purchase Agreement dated 19<sup>th</sup> October 2010 (“the Agreement”).**

2. The Plaintiff claims that he complied with the terms of the Agreement by paying the purchase price to Green Mango but that Green Mango has failed to formally complete the Agreement by transferring the Shares to him. That in further breach of the Agreement, Rentworks has since 2015 failed, refused or neglected to remit to the Plaintiff dividend payments for the financial year ending March 2015 to 2019. For these reasons, the Plaintiff states that he has lost the use of the monies paid as the purchase price for the Shares and has further lost rewards and/or dividends accrued to him since March 2015 when



- Rentworks stopped remitting dividends to him. As such, the Plaintiff seeks to be declared the owner of the Shares and an order compelling the Defendants to transfer the shares to him. Additionally, the Plaintiff seeks payment of declared but unpaid dividends for the financial year ending March 2015 to 2019 and provision of audited accounts of Rentworks for the periods between March 2014 to 2019.
3. The Defendants separately denied the Plaintiff's claim. Green Mango, while admitting entering into the Agreement, denied that the Plaintiff paid the purchase price for the Shares and that he did not and never became a shareholder in Rentworks and therefore lacked the locus standi to bring the suit against the Defendants. That the Plaintiff does not enjoy and has never enjoyed shareholder rights and is not entitled to any rewards or dividends in respect of the Shares.
  4. Green Mango contends that the Plaintiff rendered consultancy services to Rentworks pursuant to a consultancy agreement between the parties for which he submitted invoices in respect thereof, the payments for which he is purporting to fraudulently pass off as dividends paid to him for the Shares he never acquired. As such, Green Mango claims that the Plaintiff is abusing the court process in an attempt to commit fraud upon the Defendants and prays that the Plaintiff's suit against it be dismissed with costs.
  5. On its part, Rentworks states that in as much as it employed the Plaintiff, the employment was terminated as the Plaintiff absconded from the work place after it was discovered that the Plaintiff incorporated a company which was engaged and in competition with Rentworks and in a business similar to that carried out by it. That the said acts were in violation of his fiduciary duty to Rentworks and were in breach of the terms upon which the Plaintiff was engaged. Rentworks states that it was not a party to the Agreement nor was any contractual obligation placed upon it and that in any event, no instrument of transfer of shares was ever presented to it for registration at the Companies Registry with the ultimate consequence that the Plaintiff is not a shareholder in Rentworks.
  6. Rentworks avers that the Plaintiff has no cause of action against it and it denies being in breach of any contractual obligation to the Plaintiff as dividends are only paid to shareholders appearing in the shareholders register as at the date of declaration of the said dividend and that the Plaintiff's name does not appear in the said register. As such, Rentworks also urges the court to dismiss the suit against it by the Plaintiff.
  7. When the suit was set down for hearing, the Plaintiff testified on his own behalf where he relied on his witness statement dated 9<sup>th</sup> December 2019(PW 1). He produced his list and bundle of documents dated 9<sup>th</sup> December 2019(PExhibit 1-8) which include Copies of Particulars and Directors of Rentworks, the Agreement, Copy of Resolutions of Rentworks from 2012 to 2014, Copy of the Plaintiff's Bank Statements, Copy of the Letter of Intent from Catalyst Principal Partners, Copy of Form D and Form of Transfer for Rentworks from Green Mango to WYCLIFFE MUKULU, Copies of Demand Letters and Copies of various responses to demand letters. The Plaintiff also produced a supplementary list and bundle of documents dated 6<sup>th</sup> April 2021(PExhibit 9-12) which include a Copy of the National Media Group's Weekend Edition Extract dated 28<sup>th</sup> June 2020, Copies of Invoices dated 9<sup>th</sup> February 2012, 2<sup>nd</sup> May 2012, 30<sup>th</sup> June 2012 and 13<sup>th</sup> February 2013, Terms and Conditions of the Agreement and Rentworks' Shareholders' Agreement.
  8. Green Mango availed its Chief Financial Officer, JOHAN TALJAARD as its witness who relied on his witness statement dated 20<sup>th</sup> February 2020(DW 1). He produced Green Mango's list and bundle of documents dated 20<sup>th</sup> February 2020(1<sup>st</sup> DExhibit1-12) which include the Plaintiff's Employment Contract with Green Mango dated 1<sup>st</sup> March 2004, Certificate showing particulars, directors and shareholders of Rentworks, the Agreement, the Consultancy agreement between Rentworks and the Plaintiff dated 1<sup>st</sup> April 2009, various invoices, Agreement between the Plaintiff and Green Mango,



Bank statements of the Plaintiff's account, the shareholder agreement dated 12<sup>th</sup> February 2014 and the Letter of Intent by Catalyst Principal Partners dated 10<sup>th</sup> March 2015.

9. DW 1 also produced Green Mango's Supplementary List and Bundle of Documents dated 10<sup>th</sup> June 2021(1<sup>st</sup> DExhibit 13) which includes Rentworks' Shareholders' Agreement dated 12<sup>th</sup> February 2014 and; the List and Bundle of Documents dated 2<sup>nd</sup> November 2021 (1<sup>st</sup> DExhibit 14) which includes a HSBC Telegraphic Transfer Issuing Advice dated 18<sup>th</sup> February 2013. Rentworks called its Finance and Administration Manager, SARAH NYAMACHE who adopted her witness statement dated 18<sup>th</sup> May 2020(DW 2). She produced Rentworks' List and Bundle of Documents dated 18<sup>th</sup> May 2020 (2<sup>nd</sup> D Exhibit 1-3) which include a copy of Rentworks' CR12, copies of newspaper articles dated 15<sup>th</sup> March 2016 and a copy of the Agreement.
10. After the hearing, the parties were directed by the court to file written submissions which are now on record. As the evidence and submissions mirror the parties' positions that I have already summarized above, I will not rehash the same but I will make relevant references in my analysis and determination below.

### **Analysis and Determination**

11. From the Plaintiff's submissions, the court is being called to determine whether he purchased the Shares and if so, whether Green Mango should be compelled to transfer the Shares to him and as such, Rentworks should effect the said changes. The Plaintiff also seeks the court's determination of whether he is entitled to dividends declared by Rentworks for the financial years ending March 2015 to 2019 together with interest thereon at 13% p.a and the audited accounts in support.
12. As stated, the Agreement between the Plaintiff and Green Mango was common to the parties. Going through the same, the Plaintiff was to purchase 5% of the shares held by Green Mango in Rentworks for a purchase price of USD 62,500. Clause 2 defined the "effective date" to mean "...1<sup>st</sup> February 2009 following fulfillment of the terms set out in Clause 3.1." The said Clause 3.1 provides that "The purchaser hereby purchases the Rentworks shares and sales claim from the seller as one indivisible transaction with effect from the effective date." On the transfer of the Shares, Clause 3.2 states that "Transfer of such shares will be made to the purchaser upon full settlement of the purchase price, including interest" and Clause 3.3 goes on to state that "Notwithstanding the date on which the sale shares and sale claims are transferred by the seller to the purchaser, the parties agree that all risk and reward in respect of the sale shares and sale claims shall be deemed to have passed from the seller to the purchaser on the effective date."
13. On payment, Clause 4 of the Agreement stipulates that the same shall be "By way of cash transfer to the seller's nominated account held at HSBC bank; Bank name: HSBC bank Account Number: 072 \*\*\*\*\* 121 Swift Code: HSBCMUMUONU". All the parties also relied on the Shareholders' Agreement dated 12<sup>th</sup> February 2014 where Clause 2 indicates that the Plaintiff was an "Extended Shareholder" and Clause 5.1.1.1 provides that such a shareholder "...shall only hold the said shares if under the employment of Rentworks". Clause 5.1.1.2 further provides that such a shareholder can only move shares from Green Mango to any other shareholder with the Board's approval.
14. In his testimony, the Plaintiff admitted that from the Bank statement he produced, the purchase price payment of USD 62,500 is not reflected therein. There was actually no evidence produced by the Plaintiff indicating that he paid for the purchase price of USD 62,500 together with interest from the effective date to Green Mango's nominated account. The Plaintiff also admitted that as per the Shareholders' Agreement of 12<sup>th</sup> February 2014, he was not an actual shareholder of Rentworks but rather, an Extended Shareholder, who could only hold the shares for the period of his employment with



Rentworks and he admitted that the employment ended in 2015. On receipt of dividends, the Plaintiff also admitted in his testimony that the payments he received from Green Mango and as reflected in his bank account statements were not for dividends but payment of consultancy services whose invoices the Plaintiff had issued to Green Mango.

15. From the above, it is clear that the Plaintiff never paid for the Shares as required by the Agreement and as such, the Agreement was never consummated and no shares could be transferred to him as a result. It should not be lost that there are essentially six elements that must be present for a contract to be enforceable. There must be an offer, acceptance of the offer, consideration, capacity, mutuality and the terms and conditions must be legal and not in violation of any laws. In this matter, whereas there was an offer and acceptance, there was no consideration. Lack of consideration means that one of the parties to a contract is not obligated in any way while the other party holds an obligation to act (see *Maseno University Savings and Credit Co-operative Society Limited v Stima Savings and Credit Co-operative Society Limited* [2020] KEHC 10086 (KLR)). In this case, the Defendants were not obligated to transfer the Shares as long as the Plaintiff never paid for them.
16. The Plaintiff was also never an actual shareholder of Rentworks but an extended shareholder who enjoyed limited proprietorship of the shares that was conditional upon his employment at Rentworks. Clause 2.6 of the Agreement provided that the Agreement was to be “....governed and construed and interpreted in accordance with the laws of the Republic of South Africa.” Green Mango submitted that as per section 57 of South Africa’s *Companies Act*, a shareholder is defined as “...the holder of a share issued by a company and who is entered as such in the certificated or uncertificated securities register, as the case may be”. The Plaintiff admitted in his testimony that he is not registered anywhere as a shareholder of the Rentwork and Rentwork’s CR -12 produced in evidence is also now conclusive as to the shareholding position. As he is not shareholder, he was not entitled to enjoy any benefits that comes with being a shareholder including receiving dividends and as I have found, none were ever paid to him in any case.
17. The Plaintiff is thus not entitled to the Shares as he did not pay the purchase price as indicated in the Agreement and he was not entitled to payment of any dividends as he was never a shareholder and any payments made to him by the Defendants were in respect of consultancy services and not dividends. These findings ground the Plaintiff’s quest for the Shares and dividends from the Defendants. On the prayer for audited accounts, as the Plaintiff is not a shareholder of Rentworks, he is not entitled to receive information on how it is being run (see *Alois Oceano D’Sumba v Rajnikant Narshi Shah & New Ocean Trading (K) Limited* [2017] KEHC 3881 (KLR)). This prayer cannot also be allowed.

### **Conclusion and Disposition**

18. In the upshot it is my finding the Plaintiff’s has not proved his case to the required legal standard on a balance of probabilities. The Court finds and hold that the said suit has no merit and the same is hereby dismissed with costs to the Defendants.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY at NAIROBI this 16<sup>TH</sup> DAY OF DECEMBER 2024**

.....

**J.W.W. MONG’ARE**

**JUDGE**

In the Presence of:-



1. Ms. Tanui holding brief for Mr. Limo for the Plaintiff.
2. Ms. Isaac Okero for the 1<sup>st</sup> Defendant.
3. Ms. Kadima holding brief for Mr. Chacha Odero for the 2<sup>nd</sup> Defendant.
4. Amos - Court Assistant

