



**Pakenya Beans & Pulses Limited v Ijaz (Civil Suit E250 of 2023)
[2024] KEHC 15801 (KLR) (Commercial and Tax) (13 December 2024) (Judgment)**

Neutral citation: [2024] KEHC 15801 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL SUIT E250 OF 2023
FG MUGAMBI, J
DECEMBER 13, 2024**

BETWEEN

PAKENYA BEANS & PULSES LIMITED PLAINTIFF

AND

MUHAMMAD IJAZ DEFENDANT

JUDGMENT

Introduction and Background

1. By a Plaint dated 5th June 2023, the plaintiff (hereinafter “the Company”) filed the present suit against the defendant, who is one of its directors and shareholders. The Company claims that the defendant has remained dormant in the affairs of the Company thereby affecting the smooth operations and welfare of the Company.
2. The Company further contends that it has two directors, Atiff Mushtaq who is the Managing Director and a shareholder with 510 ordinary shares and the defendant who holds at least 490 ordinary shares. All the shares were fully paid for by the Managing Director and subsequently distributed between the two directors. It is the Company’s case that during its incorporation, the defendant had promised to contribute financial resources and participate in the Company’s overall management.
3. However, the Company contends that the defendant has failed to fulfill this commitment. Despite holding a key position as a signatory to the Company’s accounts, the defendant has neither made any financial contributions nor shown any effort to participate in the Company’s operations. As a result, the defendant has become a liability and an inconvenience, negatively impacting the Company’s overall performance.



4. It is further asserted that the defendant declined the invitation from the Company to voluntarily step down as a director. As a result, the Company, through a resolution dated 30th March, 2023 advocated for the removal of the defendant.
5. As a result of the hardship caused by the defendant's absenteeism from the running of the Company, it prays for a permanent injunction restraining the defendant, his agents, servants and or anybody else from partaking, running, contracting and signing any cheques or documents on behalf of the Company and a permanent injunction or order declaring that the defendant is no longer a director of the Company due to his latency.
6. Despite service of summons, the defendant neither entered appearance nor filed a defence. Following an application by the Company, the court entered judgment in default and the matter was set down for formal proof. The Company called Atiff Mustaq as its witness (PW1) whose testimony is contained in his witness statement dated 17th October 2023. PW1 produced the plaintiff's Bundle of Documents dated 5th June 2023(Plaintiff's Exhibit 1-10). The Company filed its submissions but no submissions were filed by the defendant.

Analysis and Determination

7. It should not be overlooked that even in a formal proof hearing such as this, a party is required to present sufficient evidence to support their claim. A court will not automatically enter judgment in favor of a plaintiff simply because no defence has been filed or because an interlocutory judgment is on record. See: *Geoffrey Wambanda Wandambusi) & Margaret Naliaka Wambanda V Attorney General for and on Behalf of The Commissioner of Lands, The Clerk, Bungoma County Council, Mohammed Noor Ahmed & Bungoma Municipal Council*, [2015] KECA 289 (KLR).
8. The Company submits that the defendant ought to be removed as its director and permanently barred from participating in its affairs in that capacity. The resolutions dated 30th March 2023 and 2nd May 2023, marked as Plaintiff's Exhibit 10, confirm the Company's decision to remove the defendant, in alignment with this prayer. The Company further asserts that the resolutions align with Section 139(1) of the *Companies Act*, which provides:

“A company may, by ordinary resolution at a meeting, remove a director before the end of the director's period of office, despite anything to the contrary in any agreement between the company and the director.”
9. This provision must be read in conjunction with section 139(2) of the *Companies Act* which states:

“However, a special notice is required for a resolution to remove a director under this section or to appoint a person to replace the director so removed at the meeting at which the director is removed”. (emphasis mine)
10. The combined effect of these provisions is that a director may be removed from office before the expiration of their term, provided the company passes an ordinary resolution to that effect during a properly convened meeting. The removal process ought to comply with the requirement for a special notice under Section 139(2). See: *Mohamed Jelle Omar & Abdiweli Adan Kalic (Suing for and on behalf of Total Quality Halal Correct Ltd) V Ali Salal & Salem Najem Mubarak*, [2020] KEHC 6423 (KLR) and *Francis Asunah Kisumu Water & Sewerage Co Ltd & Governor Kisumu County Peter Anyang' Nyong'o*, [2018] KEHC 7695 (KLR).



11. Whereas the Company has produced the resolutions for the defendant's removal, no special notice calling for the said meeting for the removal has been produced. Be that as it may, it is uncontroverted that the defendant is not interested in engaging or participating in the affairs of the Company. His lack of involvement is evidenced by his failure to attend court proceedings despite being served with summons. Furthermore, the defendant was served with the Company's resolution on 6th May 2023 but has made no effort to challenge it to date.
12. Requiring the Company to repeat the process under Section 139 would therefore serve no meaningful or practical purpose, as the defendant is unlikely to respond to or be affected by such notice or resolution. In light of these circumstances, I find that it would be in the best interest of the Company for the defendant to be permanently restrained from participating in its affairs and operations.

Disposition

13. Accordingly, the plaintiff's claim succeeds and I issue the following final and dispositive orders:
 - i. A permanent injunction be and is hereby issued restraining the defendant, his agents, servants and/or anybody else from partaking, running, contracting and signing any cheques or documents on behalf of the plaintiff Company;
 - ii. A declaration be and is hereby issued that the defendant is no longer a director of the plaintiff Company due to dormancy; and
 - iii. There shall be no order as to costs.

DATED, SIGNED AND DELIVERED IN NAIROBI THIS 13TH DAY OF DECEMBER 2024.

F. MUGAMBI

JUDGE

