



**Tianhe Africa Marine Limited v Jiao (Civil Case E009 of 2024)
[2024] KEHC 15483 (KLR) (4 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15483 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
CIVIL CASE E009 OF 2024
SM GITHINJI, J
DECEMBER 4, 2024**

BETWEEN

TIANHE AFRICA MARINE LIMITED PLAINTIFF

AND

LI JIAO DEFENDANT

RULING

1. For determination is the Notice of Motion dated 1st July 2024 seeking the following orders;
 1. Spent.
 2. That the court be pleased to order that the Defendant do produce the following company documents;
 - a. List of all transactions conducted under the Plaintiff's name from its inception date.
 - b. Original receipts, airway bill and approval certificates and customs entry certificates for all transactions done under the Plaintiff's name from its inception to date.
 - c. Disclosure of all bank account (s) fraudulently registered under the Plaintiff's name.
 - d. Production of all company records in the custody of the Defendant including but not limited to minutes of meetings held, resolutions and or correspondences made.
 - e. Disclosure of all original contractual agreements done with all other third parties from the date of inception.
 3. That the court be pleased to issue orders prohibiting the Defendant from leaving Kenya without leave of the court pending the hearing and determination of this suit.



4. That the court do direct that the Defendant's passport be surrendered to court pending the hearing and determination of this suit.
 5. Costs of this suit be provided for.
2. The application is founded on the grounds set out on its face and the sworn affidavit of Kerry Otieno Obware the sole Director and shareholder of the Plaintiff Company. It was stated that the Defendant approached the Plaintiff's director and discussed prospects of a partnership for the importation of machinery from China which details were to be formalized into a legally binding MOU. That over the course of one year since the oral agreement, the Plaintiff sought updates on the status of the arrangement and the Defendant falsely maintained that no business had been conducted under the Plaintiff's name. It was further deponed that on 26th June 2024, the Defendant requested to access the Plaintiff's iTax to file annual returns and upon investigations by the Plaintiff, he discovered that the Defendant had engaged in business transactions in the Plaintiff's name without consent. In additions, the Plaintiff's demands for negotiations have been ignored by the Defendant.
 3. In response, the Defendant filed a replying affidavit stating that Kerry Otieno Obware is not the owner of the Plaintiff (Company) but just a nominee vide a nominee agreement signed between the Defendant and Kerry Otieno. He stated that he bought the Company from Afonzo Kome Karithi and the terms of the nominee agreement was that Kerry Otieno would receive some monthly stipend so long as he remains a nominee in the Plaintiff (Company) which stipend was paid through the Defendant's other company Zero Degree Seafood Limited. He stated that in terms of the nominee agreement, Kerry Otieno has no interests in the Plaintiff (Company) and the Defendant being the sole owner of the company he is entitled to deal and transact in any way he deems fit.

Analysis and Determination

4. Parties filed written submissions. I have taken into account the rival affidavits, submissions by the parties as well as the authorities relied on. In essence, what the applicant seeks is discovery of the following documents;
 - a. List of all transactions conducted under the Plaintiff's name from its inception date.
 - b. Original receipts, airway bill and approval certificates and customs entry certificates for all transactions done under the Plaintiff's name from its inception to date.
 - c. Disclosure of all bank account (s) fraudulently registered under the Plaintiff's name.
 - d. Production of all company records in the custody of the Defendant including but not limited to minutes of meetings held, resolutions and or correspondences made.
 - e. Disclosure of all original contractual agreements done with all other third parties from the date of inception.
5. The Applicant's basis for seeking the above documents is that he entered into an oral agreement with the Defendant that the Defendant would use the Plaintiff (Company) to trade which he is a sole director and shareholder. The Defendant on his part says that the Plaintiff (Company) belongs to him and one Kerry Otieno Obare is but a nominee and therefore he, the defendant is entitled to run it as he deems fit. From the material placed before me, there is a Nominee agreement duly executed by the parties herein which clearly states that the Defendant is the owner of the company whilst Kerry Otieno Obare is a nominee with no beneficial interest. In my view, the said Kerry Otieno has not provided any documents to rebut the Nominee agreement thus as it stands, in my considered view he is a Nominee and the Defendant the owner. In that sense, discovery is only necessary to the applicant for certainty



that the principal (Respondent) is not engaging in illegal business or trade using the company in which the applicant is a nominee, registered sole director and or shareholder. Transparency in trade is in line with Anti-Money Laundering (AML) and Combating Financing of Terrorism (CFT) regulations. The applicant therefore need to keep an eye on the business transactions of the company to avoid getting into an illegal mix. It's on this ground that I allow the application in terms of prayer 2 of the Notice of Motion dated **1st July, 2024**. The Orders are that; -

- a. The respondent do avail to the applicant a list of all transactions conducted under the Plaintiff's name from it's inception todate.
 - b. Original receipts, airway bill and approval certificates and customs entry certificates for all transactions done under the Plaintiff's name from it's inception todate.
 - c. Disclosure of all bank accounts registered under the Plaintiff's name.
 - d. Production of all company records in the custody of the defendant including but not limited to minutes of meetings held, resolutions and or correspondences made.
 - e. Disclosure of all original contractual agreements done with all other third parties from the date of inception.
6. Such production be made within a period of 30 days.
Cost be in the cause.

RULING READ, SIGNED AND DELIVERED VIRTUALLY AT MALINDI THIS 4TH DAY OF DECEMBER, 2024.

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S.M. GITHINJI

JUDGE

In the absence of; -

1. Mr Nyanje for the Applicant
2. Mr Shujaa for the Respondent

