



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

COMMERCIAL & TAX DIVISION

MILIMANI LAW COURTS

HCCC NO. 1766 OF 2000

ALCON HOLDINGS LIMITED..... PLAINTIFF

VERSUS

KENYA COMMERCIAL BANK LIMITED..... DEFENDANT

AND

ALKA ROSHANLAL HARBANSLAL SHARMA..... INTERESTED PARTY/APPLICANT

RULING

1. The Motion of 12th June 2020 by Alka Roshanlal H. Sharma seeks the following substantive order:-

[2] A review of the order herein made on 13th March 2020 be made, to authorize the Applicant herein ALKA ROSHANLAL H. SHARMA be enjoined in the suit herein as an interested party for purposes of effecting the Consent Order dated 8th November 2017.”

2. The Applicant is the Administratrix of the Estate of her Deceased husband Kular Hanspal which claims to be a shareholder of the Plaintiff Company.

3. Without going into the merits of the Application, I would think that the following holding made by this Court today in considering the application dated 29th June 2020 in this very suit holds true in this matter as well:-

“That said the application faces a more unforgiving challenge. The substantive parties to this suit are the Company and the Bank. The true nature of the grievance of the Applicant is that the consent was entered without the authority of Company as there was no Board of Directors or living shareholders. That grievance in my view, belongs to the Company and although the shareholders or estates of the shareholders could feel aggrieved by the Consent, still, because of the legal distinction between a company and its owners, the person to challenge the consent is the Company. Individual shareholders acting outside the corporate entity cannot do so”

4. The application of 12th June 2020 is struck out with costs.

DATED, SIGNED AND DELIVERED IN COURT AT NAIROBI THIS 11TH DAY OF MAY 2021

F. TUIYOTT

JUDGE

ORDER

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions

issued by his Lordship, the Chief Justice on 17TH April 2020, this Ruling has been delivered to the parties through virtual platform.

F. TUIYOTT

JUDGE

PRESENT:

Ms Wamuyu holding brief for Ngugi for the Defendant.

Kinyanjui for the Interested Party.