



**In re Mwada Investments Company Limited (Petition E. 003 of 2021)  
[2021] KEHC 267 (KLR) (Commercial and Tax) (17 November 2021) (Ruling)**

Neutral citation: [2021] KEHC 267 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
PETITION E. 003 OF 2021  
F TUIYOTT, J  
NOVEMBER 17, 2021**

**BETWEEN**

**SAMUEL MWANGI MWANIKI ..... PETITIONER**

**AND**

**DANNY MUIRURI MUCHU ..... RESPONDENT**

**RULING**

- [1] At the heart of these proceedings is Mwada Investment Co. Limited. In a Petition dated 17<sup>th</sup> March, 2021, Samuel Mwangi Mwaniki (The Petitioner) seeks certain orders on the basis that the affairs of the Company are being conducted in an oppressive manner.
- [2] The Petitioner prays that the registration of the company be ordered back to the status of the register prevailing on 19<sup>th</sup> September, 2013 and that one Danny Muiruri Muchui be ordered to render a detailed profit and loss account of the company for the three (3) years preceding this Petition.
- [3] At the time of presenting the Petition, the Petitioner filed a Notice of Motion dated 17<sup>th</sup> March 2021 in which he seeks the following prayers:
1. ....
  2. THAT the Respondent be and is hereby restrained from operating the accounts of MWADA INVESTMENT COMPANY LIMITED (the company) wheresoever held without the concurrence of the Applicant or the express authority of this Honourable Court.
  3. THAT the Petitioner be and is hereby granted the leave of this Honourable Court to proceed with the main petition filed herein as a derivative action.



4. THAT the Registrar of Companies cause to be filed in this Honourable Court the documents filed with him/her with regard to the change of the directorship and/or shareholding of the company.
5. THAT any alterations on the Companies Register with regard to the company made after its registration on 19/9/2013 be and are hereby nullified.
6. THAT costs be in the cause.

[4] The Petitioner is no longer a registered shareholder or Director of the company. The status of the company in this regard as at 30<sup>th</sup> November, 2010 is that Danny Muiruri Muchui is the sole Director and Shareholder of the Company. In an affidavit sworn on 7<sup>th</sup> April, 2021 Muchui avers that the Petitioner, on his own volition, resigned as a Director of the Company and transferred his shares to his wife, one Nancy Wanjiru Njoroge.

[5] On his part the Petitioner alleges that he did not resign his Directorship nor transferred shares as alleged and that the documents used to remove him from the company are forgeries.

[6] For now, this Court is asked to consider and determine a motion pleading for an order of injunction and must therefore be screened through the lenses of the ever green principles in *Giella vs Cassman Brown*[1973] E.A 358 which are:

“First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience.”

[7] I fear for the Petitioner that he may not have established a prima facie case. The Petitioner has not by affidavit evidence or other evidence confronted the documents which he alleges are forgeries and which were the basis for the transfers he now challenges. Fraud must be proved on succinct evidence and so even at an interlocutory stage such an allegation needs to be backed by clear evidence. As things stand, this Court is unable to find that the Petitioner has a prima facie case making out for his restoration to membership and/or shareholding.

[8] Second, the Petitioner seeks an order to continue these proceedings as a derivative suit. This is not only confusing because what is before Court is a Petition for restoration of the status of the Company and not a suit but also because a derivative action is a preserve of a member of a Company. For now, the Petitioner is not a member of Mwada Investment Co. Limited.

[9] The Notice of Motion dated 17<sup>th</sup> March, 2021 is a cropper and is hereby dismissed with costs.

**DATED AND SIGNED THIS 11<sup>TH</sup> DAY OF NOVEMBER 2021**

**F. TUIYOTT**

**JUDGE**

**DATED AND DELIVERED AT NAIROBI THIS 17<sup>TH</sup> DAY OF NOVEMBER 2021**

**A. MABEYA, FCI Arb**

**JUDGE**

