



REPUBLIC OF KENYA



**Stephenson & another v Lynch & 2 others (Civil Case 40 of 2019)  
[2019] KEHC 12497 (KLR) (Civ) (13 December 2019) (Ruling)**

Neutral citation: [2019] KEHC 12497 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL CASE 40 OF 2019**

**JK SERGON, J**

**DECEMBER 13, 2019**

**BETWEEN**

**MARK LLOYD STEPHENSON ..... 1<sup>ST</sup> PLAINTIFF**

**UNIVERSAL RESOURCES INTERNATIONAL LTD ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**MICHAEL G. LYNCH ..... 1<sup>ST</sup> DEFENDANT**

**HENRY M. MWALUGHA ..... 2<sup>ND</sup> DEFENDANT**

**GILBERT MZEE ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. The plaintiff's herein took out the amended motion dated 5<sup>th</sup> March, 2019 in which they sought for inter alia:
  - i. ....Spent.
  - ii. ....Spent
  - iii. This Honorable Court be pleased to issue an order of temporary injunction restraining all the defendants whether by themselves or by their servants and/or agents from presenting themselves to any person or authority whether by writing or by conduct, as directors of or officers of Universal Resources International Ltd and from posing as a person having the capacity or ostensible authority to act or, commit or transact any business whatsoever for and on behalf of the second plaintiff and from interfering in any manner with the management of thereof till the hearing and final determination of this suit.
  - iv. Costs of this Application be provided for.



2. The aforesaid motion is supported by the affidavit and a further affidavit of Mark Llyod Stephenson, the 1<sup>st</sup> plaintiff /applicant. When served, Henry Mwalugha Mwamburi the 2<sup>nd</sup> Defendant/Respondent filed a replying affidavit he swore to oppose the motion.
3. In response the 1<sup>st</sup> plaintiff filed a supplementary affidavit prompting the 2<sup>nd</sup> defendant/respondent to seek for leave to file a supplementary affidavit.
4. When the motion came up for interpartes hearing, this court directed the parties to file written submissions. At the time of writing this ruling, the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/Respondents were the only parties who filed their submissions.
5. I have considered the grounds stated on the face of the motion and the facts deponed in the rival affidavits. It is the averment of the 2<sup>nd</sup> plaintiff that it is an investment company engaged in mining Manganese and other precious minerals in Taita Taveta County having duly been licenced to do so under the [mining Act](#) No 12 of 2016.
6. The 1<sup>st</sup> Plaintiff is said to be an Australian National with work permit no 1595652 and is the chief executive Chairman and Managing Director of the 2<sup>nd</sup> plaintiff Company. The 1<sup>st</sup> plaintiff states that as an investor, he is engaged in sourcing for funds for investment proposes from Australians hence he bears the responsibility to ensure that the investment company is properly run in accordance with the law honestly for the benefit of those investors.
7. The plaintiffs have stated that Michael G. Lynch, the 1<sup>st</sup> Defendant is an Irish National with no residence nor work permit to remain or work in Kenya. It is said he has no fixed aboard or visible means of livelihood neither is he a director of the 2<sup>nd</sup> Defendant.
8. It was pointed out that the 1<sup>st</sup> Defendant has engaged himself in several fraudulent activities or attempted fraud against the 2<sup>nd</sup> Defendant.
9. The plaintiff stated that in a resolution of the Board of Directors of the 2<sup>nd</sup> plaintiff passed on 5<sup>th</sup> July, 2015 the company divested the 1<sup>st</sup> Defendant of his directorship because of embezzling company funds with other persons and has even sued him for a refund of the stolen funds.
10. The plaintiffs further directed that Henry M. Mwalugha and Gilbert Mzee 2<sup>nd</sup> and 3<sup>rd</sup> Defendants respectively acting at the behest of the 1<sup>st</sup> Defendant engaged themselves in activities completely inimical to the operations of the plaintiff including forging signatures of various landowners who have entered into lease agreements with the plaintiffs in order to induce or cause the breach of such contracts and that they have engaged in similar conduct intending to cause injury or harm to the mining business of the plaintiffs.
11. It is averred that the 1<sup>st</sup> Defendant has been presenting himself as a director of the 2<sup>nd</sup> plaintiff to various persons and authorities and sending disparaging communications to Government officials in respect of the plaintiff's mining projects which threatens to cause serious financial damage to the 2<sup>nd</sup> plaintiff's operations and reputation .
12. The plaintiffs averred that they are concerned that the 1<sup>st</sup> Defendant may defraud foreigners of their money while posing as a director to enter into unlawful transactions in its name.
13. It is stated that the 1<sup>st</sup> Defendant wrote a letter pretending to be a director of the 2<sup>nd</sup> plaintiff to the cabinet Secretary, Ministry of Petroleum and Mining seeking to prevent the renewal of the Mining Licence to the 2<sup>nd</sup> plaintiff on the ground that the persons making the application on behalf of the company do not have good standing.



14. It is the submission of the plaintiffs that they have gone into great lengths to renew their mining licence for the coming year and have even negotiated and entered into compensation agreements with the local people who are in occupation of the area where the mines are located, therefore the 1<sup>st</sup> Defendant's letter are likely to cause great damage and loss to the plaintiffs. It is on the basis of the above reasons that the plaintiffs are seeking for injunctive orders pending the hearing and determination of this suit. The plaintiff's annexed to the supporting affidavits various documents and correspondences to buttress their assertions and arguments.
15. The 2<sup>nd</sup> Defendant filed a replying affidavit and totally denied the allegations made against him. The 2<sup>nd</sup> Defendant stated that the plaintiffs allegations are fabrications made with the intention of weakening his influence as the chairman of Mariweny Land Owners Group in Taita Taveta County whereof plaintiffs area taking advantage of the illiteracy and high poverty levels to defraud them. He averred that the plaintiffs have failed to show evidence that he was colluding with the 1<sup>st</sup> Defendant. The 2<sup>nd</sup> Defendant further averred that the 2<sup>nd</sup> plaintiff has had two groups of directors.
16. One group comprise of Stephen Samwuel Piano, Gerald Michael Lynch, Francis Stiangé Musa Adam, Simon Mutuku Mutua and Arthur Dominic Carvana and the other group comprise of Mark Llyond Stephenson, Stephen Kimanyi, Jason Wiliam Douglas Smith and Richard Kariuki Githae.
17. The 2<sup>nd</sup> Defendant averred that the aforesaid groups have been fighting over the directorship of the 2<sup>nd</sup> plaintiff since 2012 and have had several court cases. He stated that the fights have had the residents of Taita Taveta County question the credibility of the 2<sup>nd</sup> plaintiff's company. It is argued that the plaintiffs have attempted to cause divisions between the landowners in order to convey the delay in compensating the land owners.
18. In responses to the averments in the replying affidavit of the 2<sup>nd</sup> Defendant the 1<sup>st</sup> plaintiff filed a supplementary affidavit stating that there is no wrangling in the 2<sup>nd</sup> plaintiff's company. The 1<sup>st</sup> plaintiff is quite emphatic that the 2<sup>nd</sup> Defendant forged signatures of landowners and prompted to instruct an advocate favourable to him.
19. The 3<sup>rd</sup> Defendant also filed a replying affidavit to deny the plaintiffs' assertions. The plaintiffs averred that the 3<sup>rd</sup> Defendant was sacked from the 2<sup>nd</sup> plaintiff's employment when the company found him undermining the company's operations. The 3<sup>rd</sup> Defendant pointed out that the plaintiffs have failed to present credible evidence that he converged with the 1<sup>st</sup> Defendant.
20. The principles to be considered in determining an application for injunction were stated in the case of *Giella v Casman Brown & Co. Ltd* [1973] E.A 358. First, an applicant must show that he has a prima facie case with a probability of success. Secondly, an applicant must show the irreparable loss he would suffer if the order is denied. Thirdly, that the application to be decided on a balance of convenience if the court is in doubt.
21. Having considered the material placed before me and the written submissions filed by the 2<sup>nd</sup> and 3<sup>rd</sup> defendants, it is clear that the plaintiffs have shown they have a prima facie case with a probability of success. There is evidence that the defence have ganged up to frustrate the operations of the 2<sup>nd</sup> plaintiff 's company. It is clear from the averment of the 2<sup>nd</sup> Defendant that he has a lot of inside information concerning the 2<sup>nd</sup> defendant's company. The documents attached to the affidavits filed in support of the motion clearly show that the defendants are hell-bent to interfere with the operations of the 2<sup>nd</sup> plaintiff's company.
22. I am therefore convinced that the plaintiffs have shown a prima facie case with high chances of success.



23. It is also clear to me that if the order for the injunction is not given, the 2<sup>nd</sup> plaintiff is likely to suffer damages which cannot be compensated in monetary terms.
24. In the end the amended motion dated 5<sup>th</sup> March 2019 is found to be meritorious. The same is allowed in terms of prayer (iii) with costs to the plaintiffs.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 13<sup>TH</sup> OF DECEMBER, 2019.**

**J. K. SERGON**

**JUDGE**

In the presence of:

..... for the 1<sup>st</sup> Plaintiff  
..... for the 2<sup>nd</sup> Plaintiff  
..... for the 1<sup>st</sup> Defendant  
..... for the 2<sup>nd</sup> Defendant  
..... for the 3<sup>rd</sup> Defendant

