



REPUBLIC OF KENYA



**Meghji v Gurjar (Civil Application E047 of 2025)
[2025] KEHC 13249 (KLR) (Civ) (25 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13249 (KLR)

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

**CIVIL
CIVIL APPLICATION E047 OF 2025**

NW SIFUNA, J

SEPTEMBER 25, 2025

BETWEEN

KARIM MOHAMEDHUSSEIN HASANALI MEGHJI APPLICANT

AND

HETAL NIRMAL GURJAR RESPONDENT

RULING

1. This Ruling is on this Application by the Applicant; the motion dated 23rd May 2025. By it, the Applicant Karim Mohamedhussein Hassnali Meghji a member and minority shareholder of Go Foods Ltd; a company registered and carrying on business in Kenya. The Applicant is seeking this Court's leave, to authorize him to commence a derivative suit against one Hetal Nirmal Gurjar who is the company's Managing Director.
2. The Application which has been brought under the provisions of Sections 238 and 239 of *Companies Act* 2015, is based on the grounds listed in it, and is supported by the Applicant's Supporting Affidavit, sworn by him on 21st January 2025.
3. The principal ground of the Application is that the said Hetal Nirmal Gurjar has as Managing Director perpetrated wrongs against the company. By inter alia, engaging in acts that amount to breach of trust, negligence, mismanagement, fraud; as well as misappropriation and diversion of the company's funds.
4. The Application after being opposed by the Respondent through his Replying Affidavit, was argued orally as well as by written submissions that the parties filed.

Analysis & Determination

5. By definition, a derivative suit is a suit by a shareholder or member of a company, or even a director, filed in the name of the company against a director or the directors; accusing them of some wrong



- doing against the company or its interests. The wrong being one resulting from negligence, breach of trust, breach of duty, fraud, or other wrongful act or conduct.
6. Although derivative suits are usually by minority shareholders, I am of the view that it may also be brought by a majority shareholder. This is for the reason that derivative suits are not just meant to protect members and minority shareholders, but the company itself. Hence it is an avenue meant to promote accountability by the directors, and to protect the companies from the predatory and malevolent acts of their directors.
 7. In so doing, these suits not only make the directors answer for their actions or omissions, but also enforce the directors' fiduciary duty to the company. As they are brought and continued in the name of the company itself, rather than that of their initiators.
 8. This Court has considered the Application (and its Supporting Affidavit), the Respondent's filed Response, as well as the parties' rival written and oral submissions.
 9. The Respondent has in opposing the Application stated that the company's Articles provide for arbitration for issues relating to the company's internal management; and that the presence of an arbitral clause in the company's Articles, bars the ventilation of such disputes through litigation. In so arguing the Respondent has relied on Section 6 of the Arbitration Act of 1995 (Cap 49 Laws of Kenya) as a shield.
 10. I am of the persuasion that where there are allegations of serious wrong-doing on the part of a director or directors (especially fraud and misappropriation of the company's funds), leave for derivative suit need to be granted, even if there is a provision for arbitration. This is because derivative suits are a tool for accountability- to call upon the directors to account or answer to allegations of wrong-doing.
 11. A similar position was taken in *Nancy Mwangi t/a Worthlin Marketers v. Airtel Networks (K) Ltd and 2 Others* [2014] eKLR, where it was stated that where serious allegation of fraud and misappropriation are made against a director, public policy demands judicial scrutiny, notwithstanding any arbitral cause.
 12. I am of the fervent view that where such allegations have been made against a director or directors, the court should not allow the director(s) to take cover behind the veil of arbitration. Arbitration needs to be applied in the promotion of the law, and not as a tool for defeating the law.
 13. This is especially because this Court (the High Court) is the court that the Companies Act of 2015 (Cap 486 Laws of Kenya) in Section 2, designated to the court having jurisdiction in company matters, and the custodian of companies. This is a fundamental duty, a higher call of duty. One that calls for disabusement from scapegoating arbitration to side-step the law or avoid legal consequences.
 14. In the end, this Court finds this Application to be meritorious, hence accordingly allows, it in terms that the Applicant Karim Mohamed Hussein Hassanali Meghji is hereby granted leave to commence a derivative action (in the name of the company) against the Respondent Hetal Nirmal Gurjar the company's Managing Director. The Suit be filed within 14 days from the date of this ruling.
 15. The Applicant is further awarded the costs of this Application, to be paid by the Respondent the said Hetal Nirmal Gurjar who opposed the Application.

DATED AND DELIVERED AT NAIROBI ON THIS 25TH DAY OF SEPTEMBER 2025.

PROF (DR) NIXON SIFUNA

JUDGE

