



Rahil International Limited v I&M Bank Limited; Ravji & 3 others (Intended Interested Party) (Commercial Miscellaneous Application E934 of 2020) [2025] KEHC 13887 (KLR) (Commercial & Admiralty) (26 September 2025) (Ruling)

Neutral citation: [2025] KEHC 13887 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND ADMIRALTY
COMMERCIAL MISCELLANEOUS APPLICATION E934 OF 2020**

**MN MWANGI, J
SEPTEMBER 26, 2025**

BETWEEN

RAHIL INTERNATIONAL LIMITED APPLICANT

AND

I&M BANK LIMITED RESPONDENT

AND

DHANJI MANJI RAVJI INTENDED INTERESTED PARTY

ERIC KOCH INTENDED INTERESTED PARTY

MARCOS BRANDALISE INTENDED INTERESTED PARTY

TORSTEIN FREDRICK KOCH INTENDED INTERESTED PARTY

RULING

1. The intended interested parties filed a Notice of Motion application dated 27th August 2020 brought pursuant to the provisions of Order 1 Rule 10(2) & Order 40 Rules 1 & 2 of the Civil Procedure Rules, 2010, Sections 1A, 1B & 3A of the *Civil Procedure Act* and any other enabling provisions of the law. The intended interested parties pray for orders that Messrs Dhanji Manji Ravji, Eric Koch, Marcos Brandalise and Torstein Fredrick Koch be joined to this suit as interested parties. They also seek an for the respondent to be restrained from facilitating any transactions in the applicant's bank account No. 03801500251210 at Eldama Park Branch pending the hearing and determination of the applicant's Notice of Motion dated 11th August 2020 and HCCC No. 99 of 2016, consolidated with HCCC No. 28 of 2017 – Acceller Global Logistics Ltd & others v Rahil International Limited & others, and that



this file be placed before the Judge who is seized of the consolidated suits, for further directions and/or orders.

2. The application is premised on the grounds on the face of the Motion, and it is supported by an affidavit sworn on the same day by Mr. Dhanji Manji Ravji, a Director of the applicant company and the 1st intended interested party. He averred that vide a plaint dated 30th March 2016 and amended on 28th August 2017 in HCCC No. 99 of 2016, a suit was filed by Acceler Global Logistics Limited against the applicant and other defendants concerning the alleged sale of all that property known as L.R. No. 20751(I. R No. 68428) registered in the name of the applicant, by persons fraudulently posing as the applicant's Directors and shareholders. He contended that upon learning of the said suit, the intended interested parties vide a Notice of Motion application dated 9th June 2016 sought to be joined to that suit as interested parties.
3. He deposed that while the said application was still pending, the intended interested parties herein filed another suit being HCCC No. 28 of 2017 seeking orders for the rectification of the company Register to reflect the intended interested parties herein as the bonafide Directors and shareholders of the applicant company. Mr. Ravji stated that by a Ruling delivered on 18th July 2017, the application dated 9th July 2016 was allowed thereby, and the intended interested parties herein were joined to HCCC No. 99 of 2016. That thereafter, HCCC No. 99 of 2016 and HCCC No. 28 of 2017 were consolidated vide an order issued on 19th November 2019. He further stated that the Attorney General and the Registrar of Companies have since filed a statement of defence and a notice of co-claim both dated 14th June 2020 confirming that the 1st to 4th intended interested parties as the bonafide Directors and shareholders of the applicant company, a position that is further confirmed by Search Reports from 3rd July 2018 and 21st August 2020.
4. Mr. Ravji averred that since a company can only act through its bona fide Directors, and there is a dispute over the directorship of the applicant company, it is necessary to preserve the company's assets pending resolution of the dispute. He emphasized that the core issue for determination in the consolidated suits is the rectification of the company Register to establish the rightful Directors of the applicant company and the validity of a contested Sale Agreement. He urged this Court to join the intended interested parties to this suit as they have a legitimate interest in the company's affairs, and to restrain the respondent from allowing any transactions on the company's bank account until the dispute is resolved.
5. In opposition to the instant application, the applicant filed a replying affidavit sworn on 31st August 2020 by Mr. Duncun Deaver Achar, a Director of the applicant company. He averred that this suit is unrelated to the dispute in HCCC No. 99 of 2016, upon which the intended interested parties base the instant application. He contended that a Joint Venture Agreement was entered into on 20th June 2006 between the intended interested parties and Energy & General Limited, the holding company of Stepping Stone Holding Ltd, owned by the applicant's current Directors. That under the said Joint Venture Agreement, Stepping Stone was to inter alia, provide L.R No. 20751 (I.R. 68428) which was at the time registered in its name, while the intended interested parties were to provide financing.
6. Mr. Achar stated that the intended interested parties executed Deeds of Trust confirming that they were holding their shares in Energy & General Limited as Trustees. He further stated that Stepping Stone transferred the suit property to the applicant, incorporated as a Special Purpose Vehicle to develop the suit property, but after failing to provide the agreed financing, the intended interested parties resigned as the applicant's Directors and were replaced by its current Directors in line with the terms of the Joint Venture Agreement. Mr. Achar asserted that the Advocates who witnessed and commissioned the transfers have sworn affidavits supporting the current Directors' position. He averred that in any



event, the intended interested parties reside abroad and have not actively participated in the affairs of the applicant company.

7. Mr. Achar contended that the applicant's account in question has always been operated by its current Directors, and that the intended interested parties have never participated in managing or accessing the said account. He averred that with a failed project, diminished cash flow and an idle land in their hands the applicant's current Directors sold L.R No. 20751 (I.R. 68428) to Acceller Global Logistics Limited, and the suit property was transferred to Acceller Global Logistics Ltd, and a large escrow deposit of Kshs.81,100,000/= that has since accrued interest of over Kshs.25,000,000/= was made following a Court order issued on 8th April 2016. He contended that the intended interested parties do not stand to suffer any prejudice in the event that the application herein is disallowed. Mr. Achar asserted that the bank account in issue holds only Kshs.1,240,000/= which the applicant's Directors need urgently for purposes of administration of the applicant company.
8. The instant application was canvassed by way of written submissions. The intended interested parties' submissions were filed by the law firm of Oraro & Company Advocates on 13th September 2020, while the applicant's submissions were filed on 11th September 2020 by the law firm of Prof. Tom Ojienda & Associates. On 26th November 2024, Mr. Otieno, learned Counsel for the respondent, indicated that the respondent would not oppose the application herein.
9. Ms Lubano, learned Counsel for the interested parties cited the case of Francis Karioki Muruatetu & another v Republic [2016] eKLR and submitted that the intended interested parties have a clear interest in the management of the applicant company and the same is supported by CR-12 forms, which show that they are Directors and shareholders of the said company. She further submitted that the intended interested parties are likely to suffer prejudice in the event that the instant application is disallowed, especially so because the account funds belong to the applicant company, hence only its lawful Directors should operate it.
10. Mr. Okore, learned Counsel for the applicant submitted that the disputed bank account has always been operated by the applicant's Directors on behalf of the company, thus this control should not be disrupted to ensure the applicant's survival. He argued that the intended interested parties failed to rebut the factual claims made in the applicant's affidavit and instead relied on blanket denials. Mr. Okore urged the Court to resolve the dispute herein based on equity and discretion, as permitted by Article 159 of *the Constitution*, rather than rigid legal technicalities.

Analysis And Determination.

11. I have considered the application herein, the grounds on the face of it, and the affidavits filed in support thereof. I have also considered the replying affidavit by the applicant and the written submissions by Counsel for the intended interested parties and the applicant. The issues that arise for determination are –
 - i. Whether the intended interested parties should be joined to this suit; and
 - ii. Whether the respondent should be restrained from facilitating any transactions in the applicant's bank account No. 03801500251210 at Eldama Park Branch.



Whether the intended interested parties should be joined to this suit.

12. Joinder of parties is provided for under Order 1 Rule 10(2) of the Civil Procedure Rules, 2010 which states that -

The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.

13. The tests for determining an application for joinder of parties were restated by the Court in the case of *Kingori v Chege & 3 others* [2002] 2 KLR 243 where Nambuye, J (as she then was) stated that the guiding principles when an intending party is to be joined to proceedings are -

- i. He must be a necessary party;
- ii. He must be a proper party;
- iii. In the case of the defendant there must be a relief flowing from that defendant to the plaintiff;
- iv. The ultimate order or decree cannot be enforced without his presence in the matter; and
- v. His presence is necessary to enable the Court effectively and completely adjudicate upon and settle all questions involved in the suit.

14. From the above decision, it is evident that in order for a party to be joined as an interested party in a suit, he must establish that he is a necessary and/or proper party to the proceedings and that he possesses a clearly identifiable interest/stake in the matter.

15. Upon perusal of the pleadings filed herein, I am convinced that this suit is related to HCCC No. 99 of 2016 as consolidated with HCCC No. 28 of 2017. In HCCC No. 99 of 2016, Acceler Global Logistics Limited filed a suit against the applicant and other defendants in respect to the alleged sale of L.R. No. 20751(I. R No. 68428) by the applicant to Acceler Global Logistics Limited. The intended interested parties contend that the aforesaid property was sold by persons fraudulently posing as the applicant's Directors and shareholders, thus they had no authority to sell the said parcel of land. HCCC No. 28 of 2017 on the other hand was instituted by the intended interested parties herein against inter alia, the alleged current Directors of the applicant company seeking several orders, one of which is a declaration that the intended interested parties herein are the bonafide Directors and shareholders of the applicant company.

16. From the foregoing, it is evident that there is an issue of who the bonafide and/or legitimate shareholders and Directors of the applicant company are, leading to the question as to whether the persons who sold L.R. No. 20751(I. R No. 68428) on behalf of the applicant company to Acceler Global Logistics Limited had the power and/or the requisite locus standi to do so. On perusal of the pleadings filed in this suit from its institution, the applicant is seeking an order directing the respondent to unfreeze its bank account No. 03801500251210 held at the respondent's Eldama Park Branch so that the applicant can transact in the said account without any hindrance.

17. On the other hand, it must be noted that the application was filed by a different set of Directors from the intended interested parties herein. As was correctly stated by the intended interested parties, a company can only act through its bonafide Directors. Therefore, since there is a dispute over the



directorship of the applicant company, this suit cannot be determined in the absence of all the parties who claim to be bonafide and/or legitimate Directors of the applicant company, and before the Court in HCCC No. 99 of 2016 as consolidated with HCCC No. 28 of 2017 determines who the bonafide/legitimate Directors of the applicant company are.

18. In view of the competing interests of the current Directors of the applicant company and the intended interested parties in the applicant company, it is my finding that it will be in the interest of justice to have both sets of Directors as parties to this suit before any questions as to the rights of the applicant company are determined.
19. I am therefore persuaded that the intended interested parties are necessary parties to these proceedings, as they have established an identifiable stake in the dispute. For this reason, I hold that their presence is necessary to enable this Court to effectively and completely adjudicate upon and settle all questions in controversy in this suit.

Whether the respondent should be restrained from facilitating any transactions in the applicant's bank account No. 03801500251210 at Eldama Park Branch.

20. The application herein was brought under the provisions of Order 40 Rules 1 & 2 of the Civil Procedure Rules, 2010 which states that –

Rule 1

Where in any suit it is proved by affidavit or otherwise -

- a. that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or
- b. that the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit, the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.

Rule 2

1. In any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any injury of a like kind arising out of the same contract or relating to the same property or right.
 2. The court may by order grant such injunction on such terms as to an inquiry as to damages, the duration of the injunction, keeping an account, giving security or otherwise, as the court deems fit.
21. The Court in the case of *Nguruman Limited v Jan Bonde Nielsen & 2 others* [2014] eKLR, when dealing with an application for injunction stated thus-

“In an interlocutory injunction application, the applicant has to satisfy the triple requirements to;



- a. establish his case only at a prima facie level,
 - b. demonstrate irreparable injury if a temporary injunction is not granted, and
 - c. ally any doubts as to (b) by showing that the balance of convenience is in his favour."
22. The intended interested parties seek an order for the defendants to be restrained from facilitating any transactions in the applicant's bank account No. 03801500251210 at Eldama Park Branch pending the hearing and determination of the applicant's Notice of Motion dated 11th August 2020 and HCCC No. 99 of 2016, consolidated with HCCC No. 28 of 2017.
 23. It is now well settled that an application for grant of orders of temporary injunction can only be made in cases where there is a risk and/or threat of wasting, damaging, alienation, sale, removal, or disposition of a property in dispute in a suit, until the disposal of the suit or until further orders. As explained herein before there is a live dispute on the directorship of the applicant company. Therefore, in the event that the orders sought in this suit are granted, this court cannot ascertain whether the funds in the applicant's bank account would be released to the rightful Directors or whether the applicant's board properly authorized the filing of this suit against I & M Bank.
 24. The Court of Appeal in the case of *Mrao Ltd v. First American Bank of Kenya Ltd & 2 others* [2003] eKLR, considered what constitutes a prima facie case and held that -

"So what is a prima facie case" I would say that in civil cases it is a case in which on the material presented to the Court a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter. A prima facie case is more than an arguable case. It is not sufficient to raise issues but the evidence must show an infringement of a right, and the probability of success of the Applicant's case upon trial. That is clearly a standard, which is higher than an arguable case."
 25. I am persuaded that it is necessary to preserve the applicant's assets pending resolution of the dispute on its directorship and shareholding. It is my finding that the intended interested parties have established a prima facie case to warrant being granted an order for injunction.
 26. In light of the foregoing, it is evident that if it is ultimately established that the intended interested parties are the bonafide Directors and/or shareholders of the applicant company, and the funds in the applicant's bank account have already been released to and utilized by its current Directors, both the applicant and the interested parties risk suffering irreparable harm.
 27. The issue of balance of convenience does not arise since I am not in doubt. However, based on my analysis in the preceding paragraphs, the balance of convenience tilts in favour of the interested parties herein.
 28. Having determined that this suit is to some extent closely related to HCCC No. 99 of 2016 as consolidated with HCCC No. 28 of 2017, it would be both in the interest of justice and for the sake of orderly case management for this matter to be placed before the Judge handling the consolidated suits for further directions and/or orders.
 29. In the end, this Court finds that the intended interested parties' application dated 27th August 2020 is merited. It is hereby allowed in the following terms –



- i. That Messrs Dhanji Manji Ravji, Eric Koch, Marcos Brandalise and Torstein Fredrick Koch are hereby joined to this suit as interested parties;
- ii. That the respondent is hereby restrained from facilitating any transactions in the applicant's bank account No. 03801500251210 at Eldama Park Branch pending the hearing and determination of the applicant's Notice of Motion dated 11th August 2020 and HCCC No. 99 of 2016, consolidated with HCCC No. 28 of 2017 – Acceller Global Logistics Ltd & others v Rahil International Limited & others; and
- iii. That this file shall be placed before this Court as it is seized of hearing of the of HCCC No. 99 of 2016, consolidated with HCCC No. 28 of 2017 – Acceller Global Logistics Ltd & others v Rahil International Limited & others for further directions.

It is so ordered.

**DELIVERED DATED, SIGNED AT NAIROBI ON THIS 26TH DAY OF SEPTEMBER 2025.
RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

NJOKI MWANGI

JUDGE

In the presence of:-

No appearance for the applicants

Mr. Mutugi for the respondent – I & M Bank Limited

Mr. Ochieng for the respondent – Rahil International Limited

Ms B. Wokabi – Court Assistant.

NJOKI MWANGI, J.

