

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND TAX DIVISION

HCCOMM NO. E071 OF 2024

(CONSOLIDATED WITH HCCOMM NO. E072 OF 2024, HCCOMM NO. E073 OF 2024, HCCOMM NO. E074 OF 2024, HCCOMM NO. E076 OF 2024 & HCCOMM NO. E077 OF 2024)

IN THE MATTER OF HOUSING SCHEMES LIMITED

-AND-

IN THE MATTER OF CONTRAVENTION OF THE COMPANIES ACT NO. 17
OF 2015

-AND-

IN THE MATTER OF CONTRAVENTION OF THE ARTICLES OF
ASSOCIATION OF HOUSING SCHEMES LIMITED

-BETWEEN-

MUKTA CHANDRAKANT GHEEWALA (Suing as the
Executrix of the Estate of Chandrakant

Shamjibhai Gheewala).....1ST PLAINTIFF/APPLICANT

SHRIKESH GHEEWALA.....2ND PLAINTIFF/APPLICANT

MAMTA GHEEWALA.....3RD PLAINTIFF/APPLICANT

-VERSUS-

ELESHKUMAR CHANDRAKANT

GHEEWALA.....1ST DEFENDANT/RESPONDENT

HOUSING SCHEMES LIMITED..... INTENDED 2ND DEFENDANT

RULING NO. 2

1. I have considered the application dated 30th September 2025 and the affidavit in support thereof. The application seeks an order to have the Ruling scheduled for today for the application dated 23rd June 2025 filed by the plaintiffs arrested so that this Court can first hear and determine the application dated 23rd May

2025 filed by Housing Schemes Ltd seeking to be joined to this suit as the 2nd defendant.

2. Ms Kale left the matter to this Court's determination, as she was not served with the application in issue. Ms Kamau has opposed the application.
3. Apart from seeking to arrest the Ruling for today, Mr. Kipsang prays that the proceedings of 16th September 2025 be set aside because the intended 2nd defendant's application dated 23rd May 2025 is yet to be heard and determined and the said application seeks joinder of the intended 2nd defendant, Housing Schemes Limited, which would like to respond to the application dated 23rd June 2025 filed by the plaintiffs.
4. Ms Kamau has opposed the application dated 30th September 2025 on the basis that Tabut & Tabut Advocates have no instructions from Housing Schemes Ltd to come on record as they have not filed a resolution appointing them.
5. I must say that is a statement from the bar and if the plaintiffs wish to challenge the appointment of Tabut & Tabut Advocates, a formal application should be filed.
6. Going back to the proceedings of 16th September 2025, I note that Ms Tabut Advocate for the intended 2nd defendant attended Court on that day. The plaintiffs were represented by Ms Mukui who held brief for Mr. Kimamo Kuria for the plaintiffs. Ms Kale held brief for Mr. Nyaanga for the defendant. Each of the Advocates was given an opportunity to address this Court. Ms Mukui informed the Court that their application dated 23rd June 2025 was coming up for taking a Ruling date and they had filed submissions dated 23rd August 2025.

7. She further informed the Court that the lease was expiring on 30th November 2025 and she prayed for an early Ruling date. Ms Kale on her part stated that the respondent filed a replying affidavit sworn on 13th August 2025 and submissions dated 12th September 2015.
8. Ms Tabut said that they were not a party to the application dated 23rd June 2025. She further stated that their application is dated 23rd May 2025.
9. Based on the foregoing representations and the nature of the application dated 23rd June 2025, wherein there is need for the lease for Housing Schemes Ltd to be renewed before it expires on 30th November 2025, I scheduled delivery of a Ruling for the application dated 23rd June 2025 to today.
10. I also proceeded to give directions for the application dated 23rd May 2025 and I gave it a mention date for 21st October 2025 to confirm compliance and to take a Ruling date.
11. In a surprising turn of events, the law firm of Tabut & Tabut Advocates filed a Chamber Summons dated 30th September 2025 seeking to arrest today's Ruling so that their client's application dated 23rd May 2025 for joinder of Housing Schemes Ltd can be heard first.
12. It is not lost to this Court that today, Ms Tabut is not before me, but Mr. Kipsang who is not seized of the facts of what transpired in Court on 16th September 2025 is the one who was sent to appear before me.
13. I see double speak from the law firm of Tabut & Tabut Advocates and their client. Ms Tabut was categorical on 16th September 2025 that the application dated 23rd June 2025, did not concern them, which means their client. Why the sudden turnaround two weeks later, when now their client wants to get involved in an application it said it had no interest in? I see mischief and I read

bad faith in the application dated 30th September 2025 as the Director namely Mr. Eleshkumar Gheewala who swore the affidavit in support of the said application must be aware that the lease for Housing Schemes Ltd is due to expire on 30th November 2025. The application dated 30th September 2025 is in my view a delaying tactic to ensure that the Ruling for application dated 23rd June 2025 is not determined in good time.

14. Since there was no illegality or a procedural error in the proceedings of 16th September 2025. I decline to set them aside.
15. Further, I note that Mr. Eleshkumar Gheewala who is a Director of Housing Schemes Ltd filed a replying affidavit sworn in response to the application dated 23rd June 2025.
16. Having done so, I do not see what prejudice Housing Schemes Ltd, stands to suffer if I deliver the Ruling scheduled for today. It must be noted that the work of the Court is to do justice between the parties on the basis of the evidence placed before it. In my view, there was sufficient material placed before me by the plaintiffs and the defendant which enabled me to write a Ruling for the application dated 23rd June 2025.
17. Further, it must not be forgotten that companies are run and their operations are done by human beings and Mr. Eleshkumar Gheewala is one of the Directors of Housing Schemes Ltd. I therefore decline to arrest the Ruling scheduled for today as no justifiable reason has been advanced by the intended 2nd defendant for arrest of the said Ruling.
18. The application dated 30th September, 2025 is hereby dismissed with no order as to costs.

It is so ordered.

DELIVERED, DATED and SIGNED at NAIROBI on this 3rd day of October 2025. Ruling delivered through Microsoft Teams Online Platform.

NJOKI MWANGI

JUDGE

In the presence of:-

Ms Kamau holding brief for Mr. Kimamo Kuria for the plaintiffs

Ms Kale holding brief for Mr. Nyaanga for the defendant

Mr. Kipsang holding brief for Ms Tabut for the 2nd intended defendant.

Ms B. Wokabi – Court Assistant.