



Patel & another v Master Macadamia (EPZ) Limited & 3 others (Miscellaneous Application E040 of 2025) [2025] KEHC 14285 (KLR) (13 October 2025) (Ruling)

Neutral citation: [2025] KEHC 14285 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
MISCELLANEOUS APPLICATION E040 OF 2025**

HM NYAGA, J

OCTOBER 13, 2025

**IN THE MATTER OF SECTION 863 AND 864 OF THE
COMPANIES ACT NO. 17 OF 2015 LAWS OF KENYA**

AND

**IN THE MATTER OF: RECTIFICATION OF THE COMPANY
REGISTER OF MASTER MACADAMIA (EPZ) LIMITED**

BETWEEN

BHAVESH JAYANTIBHAI PATEL 1ST APPLICANT

JAYANTIBHAI CHATURBHAI PATEL 2ND APPLICANT

AND

MASTER MACADAMIA (EPZ) LIMITED 1ST RESPONDENT

HENRY PAUL IRERI NJERU 2ND RESPONDENT

ESTATE OF THE LATE PROTASIO NJERU 3RD RESPONDENT

CHRISTINE NJERU 4TH RESPONDENT

RULING

1. Via a Notice of Motion dated 16th April, 2025, brought under sections 863 and 864 of the *Companies Act* no. 17 of 2015, the Applicant seeks orders:
 - a. That in the first instance ex-parte, and thereafter pending the hearing and determination of this Application, this honourable court do issue an injunction preventing the 1st to 4th Respondents, whether by themselves or through their agents, servants or representatives from



dealing in any manner whatsoever, with Master Macadamia (EPZ) Limited or any of its assets, pending the hearing and determination of this Application.

- b. That in the first instance ex-parte, and thereafter pending the hearing and determination of this Application, this honourable court do issue a temporary injunction restraining the 1st to 4th Respondents whether by themselves or through their agents, servants or any other person acting on their behalf from making any corporate decisions and/or resolutions of the 1st Respondent Company or implementing any corporate changes relating to the 1st Respondent Company pending the hearing and determination of this Application.
- c. That in the first instance ex parte, and thereafter pending the hearing and determination of this Application, this honourable court be pleased to order the Registrar of Companies to provide a complete record of the historical changes made to the 1st Respondent Company's shareholding and directorship.
- d. That in the first instance ex-parte, and thereafter pending the hearing and determination of this Application, this honourable court do issue a status quo order by staying any all Court proceedings initiated by the 2nd to 4th Respondent, arising from or related to the disputed entry of their names in the Company's register of members, pending the hearing and determination of this Application.
- e. That in the first instance ex-parte, and thereafter pending the hearing and determination of this Application, this Honourable court do issue a temporary order of stay restraining the 2nd to 4th Respondents, whether by themselves, their servants, agents or any other person acting on their behalf, from proceedings with or taking any further steps in Meru High Court Misc No. 009 of 2024 — Henry Njeru vs Bhavesh Jayantibhai Patel and Jayantibhai Chaturbhai Patel and in Meru High Court Suit No. EOOI of 2025 –Master Macadamia (EPZ) Limited, Henry Njeru, the Estate of Protasio Njeru vs Bhavesh Jayantibhai Patel and Jayantibhai Chaturbhai Patel, or any other suit or legal proceedings initiated or instituted by them, purporting to act as a shareholder or derivative claimant, based on the disputed entry on the register of members of Master Macadamia (EPZ) Limited, pending the hearing and determination of this Application.
- f. That in the first instance ex-parte, and thereafter pending the hearing and determination of this Application, this Honourable court be pleased to issue a temporary injunction restraining the 2nd to 4th Respondents from initiating, continuing, or prosecuting any criminal proceedings, including but not limited to Meru Criminal Case No. E1763/2024 — Republic vs Bhavesh Jayantibhai Patel and Meru Criminal Miscellaneous Application No. E071/2024 -Republic vs Master Macadamia (EPZ) Limited and I&M Bank arising from or related to the disputed entry of their names in the Company's register of members, pending the hearing and determination of this Application.
- g. That this Honourable court be pleased to order that the Register of Members of the 1st Respondent Company and all records and files kept by the 5th Respondent in relation to the 1st Respondent Company, be rectified to reflect the following as the bona fide and rightful shareholders and directors of the 1st Respondent Company: -
 - a) Directorship:
Mr. Bhavesh Jayantibhai Patel
 - b) Shareholding:



Mr. Bhavesh Jayantibhai Patel — 50 ordinary shares of KES 1,000 each

Mr. Jayantibhai Chaturbhai Patel — 50 ordinary shares of KES 1,000 each

- h. That the costs of this Application be borne by the 2nd to 4rd Respondents jointly and severally.
2. The Application is premised on the grounds on its face and supported by an affidavit sworn by the Applicant, on 16TH April, 2025.
3. The applicants submit that they have discovered the existence of the following forged and fraudulent documents (hereinafter "fraudulent documents") relating to the 1st Respondent Company. The fraudulent documents were prepared and lodged on 15th March 2022, to the Companies Registry, by the 2nd Respondent:-
 - I. Minutes of Meeting of Directors of Master Macadamia (EPZ) Limited, purportedly held at the Company's Registered Office on 15th March 2022, which indicates both the Applicant's herein attended the meeting, where it was resolved that the applicants would be appointed as directors and shareholders of the 1st Respondent Company;
 - II. Letters dated 15th March 2022 addressed to the Registrar of Companies, purportedly signed by the Applicants;
 - III. Notice of Change of address of Directors of the Company;
 - IV. Transfer of Shares or Stock dated 15th March 2022, purportedly executed by the applicant's; and
 - V. Affidavits sworn by Henry Paul Ileri Njeru and Protasio Njeru on 15th March 2025 deponing the transfer of shares to the Applicants.
4. The applicants further state that the fraudulent documents were lodged at the Companies Registry on 15th March 2022 and are acted on by the 5th Respondent, resulting to the alteration of the Register of Members to reflect the following;
 - a) Directorship:

Henry Paul Ileri Njeru
Protasio Njeru
Christina Njeru
Bhavesh Jayantibhai Patel
Jayantibhai Chaturbhai Patel
 - b) Shareholding;

Henry Paul Ileri Njeru - 30 ordinary shares of KES 1,000 each
Protasio Njeru - 30 ordinary shares of KES 1,000 each
Bhavesh Jayantibhai Patel — 20 ordinary shares of KES 1,000 each
Jayantibhai Chaturbhai Patel — 20 ordinary shares of KES 1,000 each
5. They further state that as a result of these fraudulent changes of shareholding and directorship:



- i. The 2nd to 4th Respondents have unlawfully gained control of the 1st Respondent Company's assets, bank accounts and properties.
 - ii. The 2nd and 3rd Respondents have made changes to the 1st Respondent by appointing the 4th Respondent as a director.
 - iii. The 2nd Respondent has falsely represented himself to be a shareholder and director of the 1st Respondent Company to the Director of Criminal Investigations. Based on this false representation, the 2nd Respondent filed a shareholder criminal complaint against the 1st and 2nd Applicants for their involvement with the 1st Respondent Company. Pursuant to the complaint by the 2nd Respondent, purporting to be a shareholder, an unjustified criminal case was instituted against Bhavesh Jayantibhai Patel for allegedly stealing as a director from the 1st Respondent Company in Meru Criminal Case No. E1763/2024 — Republic vs Bhavesh Jayantibhai Patel.
 - iv. The 2nd Respondent, purporting to be a shareholder of the 1st Respondent Company has filed an Application for leave to file a suit on behalf of the 1st Respondent Company in Meru High Court Misc No. 009 of 2024 — Henry Njeru vs Bhavesh Jayantibhai Patel and Jayantibhai Chaturbhai Patel and in Meru High Court Suit No. EOOI of 2025 -Master Macadamia (EPZ) Limited, Henry Njeru, the Estate of Protasio Njeru vs Bhavesh Jayantibhai Patel and Jayantibhai Chaturbhai Patel.
 - v. The 2nd Respondent, purporting to be a shareholder and director, has applied to Court for an injunction to prevent the 1st and 2nd Applicant from dealing with the 1st Respondent Company or any of its assets.
 - vi. That the fraudulent changes have led to abuse of Court processes as the 2nd to 4th Respondents are falsely representing themselves as shareholders and directors of the 1st Respondent Company to both investigative authorities and Courts.
6. The applicants' case is that unless this Application is certified urgent and the orders issued in the first instance, the 2nd to 4th Respondents will continue to fraudulently deal with the 1st Respondent Company's assets and to falsely represent themselves as shareholders and directors. That the delay in addressing this issue would further enable the 2nd to 4th Respondents to exploit the altered records, potentially leading to continued unlawful actions, financial losses, and grave reputational harm to the Applicants.
 7. The applicants aver that unless this Application is certified urgent and the orders granted in the first instance, the 2nd to 4th Respondent will continue to abuse the Court's processes by relying on their fraudulent changes made to the Company records. This ongoing misconduct will result in further harm and unjust actions that will adversely affect the integrity of the legal proceedings.
 8. They further aver that unless this Application is certified urgent, there is an imminent risk that the 2nd to 4th Respondents will change the 1st Respondent's Company's Bank Account signatories and appoint new directors.
 9. The respondents filed a notice of preliminary objection and a replying affidavit. The preliminary objection is premised on the following grounds :
 - a. The issue of whether the 2nd to 4th Respondents herein are directors/shareholders of Master Macadamia (EPZ) Limited, the 1st Respondent herein, is res-judicata and the Honourable court lacks the requisite jurisdiction to hear and determine the Application.



- b. The Originating Notice of Motion dated 16th April, 2025 offends the provisions of Section 7 of the *Civil Procedure Act*.
- c. The Originating Notice of Motion is fatally defective, bad in law and otherwise an abuse of the court process.
10. The court directed that the objection be canvassed through written submissions. However, only the applicants had filed theirs at the time of writing this ruling. That said I note that the replying affidavit by the respondents raises the same issues so I will refer to the same. I will therefore look at it, restricting myself to matters relating to the preliminary objection.
11. I have looked at the application, the objection and the arguments by each side. I will not rehash the same.
12. The parameters of a preliminary objection were set out in *Mukisa Biscuits Ltd Vs West End Distributors Ltd (1969) EA 696* where it was held as follows:-
- “So far as I am aware, a Preliminary Objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the Court, or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”
13. In *Oraro vs Mbaja 2005 1 KLR 141* the court described a preliminary objection as follows;
- “A ‘Preliminary Objection’, correctly understood, is now well identified as, and declared to be a point of law which must not be blurred with factual details liable to be contested and in any event, to be proved through the process of evidence. Any assertion which claims to be a Preliminary Objection and yet it bears factual aspects calling for proof, or seek to adduce evidence for its authentication is not, as a matter of legal principle, a true Preliminary Objection which the Court should allow to proceed.”
14. On the same issue, in *Avtar Singh Bhamra & Another vs. Oriental Commercial Bank, Kisumu High Court Civil Case NO. 53 of 2004*, the Court held that:
- “A Preliminary Objection must stem or germinate from the pleadings filed by the parties and must be based on pure points of law with no facts to be ascertained.”
15. A plea of res judicata is a valid point for determination as a preliminary objection.
16. The principle of res judicata is set out under Section 7 of the *Civil Procedure Act* as follows;
- ‘No Court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other Court having jurisdiction in Kenya to grant the relief claimed.’



17. In *Republic v Registrar of Societies - Kenya & 2 Others Ex-Parte Moses Kirima & 2 Others* [2017] eKLR the court set out conditions for the principle to apply. It was held that:
- “...Therefore for the principle to apply certain conditions precedent must be shown to exist: First, the matter in issue in the subsequent suit must also be directly and substantially in issue in the previously instituted suit; proceedings must be between the same parties, or between parties under whom they or any of them claim, litigating under the same title; and such suit or proceeding must pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed...”
18. In summary, to successfully raise a plea of *res judicata*, it must be shown that;
- a. The matter in issue in the former suit must be directly and substantially the same as the matter in issue in the subsequent suit.
 - b. The parties in the two suits must be the same or litigating under the same title.
 - c. The suit must have been between the same parties or their representatives.
 - d. The court that decided the former suit must have been competent to try the subsequent suit.
 - e. The issue must have been heard and finally decided by such a court.
19. The 1st to 4th Respondents contend that the Ruling by Hon. Justice Kassan in Meru HCCOMM E009 of 2024 which granted injunctive relief against the Applicants, renders the present application *res judicata*.
20. The stated case was one of a derivative action by one shareholder, who is the 2nd respondent herein. In its ruling delivered on 11th July 2024, the court held as follows;
- ‘No doubt the applicant is one of the founders of the company and a shareholder with 30 percent shares. The allegations that the applicant obtained shares illegally are mere allegations which cannot hold water and the court cannot rely on it.’
21. The applicants moved the Court of Appeal with an application for stay of the orders issued by my brother Justice Kassan, which application was dismissed.
22. At page 9 of its ruling delivered on 6th February, 2025, the Court of Appeal stated as follows:-
- “The intended appeal cannot be rendered nugatory by the applicant’s being held accountable to the respondent who is a shareholder of the company...”
23. The present application, brought under Sections 863 and 864 of the *Companies Act*, challenges the very foundation and validity of that register itself, alleging fraud.
24. The applicants argue that the application is a statutory remedy that is not dependent on the outcome of any suit. That the Registrar is not a party to the stated suit.
25. It is clear that the court two decisions did address the question of the propriety of the registration of the 2nd respondent as a shareholder of the company. In my view that particular issue is spent and can only be challenged within the derivative suit itself.
26. In my view any issues that affect the composition of the company and its directorship is the subject of determination in HCC No. E009 of 2024. The court will have an opportunity to deal with all the



important issues, including the manner in which the registration took place. The Court retains the power to summon the Registrar if the need arises.

27. It is also to be remembered that the applicants' own registration as shareholders/directors at a particular time has been challenged in Meru HCC COMM E001 of 2025.
28. By bringing this application, the applicants are regurgitating an issue already dealt with by the court, and is also introducing a parallel discourse on the subject matter in those suits. The application, in my view also offends section 6 of the *Civil Procedure Act*. What will be the outcome if conflicting decisions emanate from the three matters? A grant of the orders sought, even on just a temporary basis, will be in direct conflict with those already issued in the other matters. This fortifies the submission that the application is improperly in court.
29. For the forgoing reasons I find that the preliminary objection is merited and the same is upheld.
30. Consequently, the application is struck out with costs.

DATED, SIGNED AND DELIVERED AT MERU THIS 13TH DAY OF OCTOBER, 2025.

H. M. NYAGA

JUDGE

