



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC LAND CASE NO. E021 OF 2025

HOME BAY PROPERTY
LIMITED.....PLAINTIFF/APPLICANT

VERSUS

MINFAN.....1ST

DEFENDANT/RESPONDENT

QUANHAI LUI.....2ND

DEFENDANT/RESPONDENT

RULING

1. Before me for determination are two applications. The first application is a Notice of Motion dated 22nd January 2025, brought under Sections 3A and 3B of the Civil Procedure Act, Orders 40 Rule 1 and 51 Rule 1 of the Civil Procedure Rules, Sections 24, 26, and 80 of the Land Registration Act and Article

40 of the Constitution, in which the Plaintiff/Applicant seeks the following orders:-

a) Spent.

b) Spent.

c) Spent

d) Spent

e) Spent.

f) THAT the Honourable Court be and is hereby pleased to issue a temporary injunction restraining the 1st and 2nd Respondents, their agents, employees, or any person acting on their behalf from constructing, renovating, building, modifying, and in any manner whatsoever from interfering with the suit property pending the hearing and determination of this suit.

g) THAT this Honourable Court be pleased to issue an injunction restraining the 1st and 2nd Respondents, their agents, employees, or any person acting on their behalf, from leasing,

alienating, selling, donating, gifting, renting, licensing, and in any other manner transferring the title of the suit property until this suit is heard and determined.

h) THAT the Honourable Court be and is hereby pleased to issue an injunction restraining the 1st and 2nd Respondents, their agents, employees, or any person acting on their behalf from occupying the suit premises until this suit is heard and determined.

i) THAT in the alternative, this Honourable court does maintain the status quo.

j) THAT the orders be served upon the officer in Charge of Kilimani Police Station for enforcement.

k) THAT the Costs of this application be awarded to the Plaintiff/Applicant.

2. The application is premised on the grounds appearing on its face together with the supporting affidavit of Liu Yong sworn on even date.

THE APPLICANT'S CASE

3. The deponent averred that he is one of the three directors and a shareholder of the Plaintiff/Applicant, which owns Soho Apartment located on L.R. No. 2/723 (original No.2/421).
4. He deposed that the suit property, the Spa, is located within the suit property. He further averred that sometime in 2024, Qian Zhihua, a co-director, inquired about the status of the suit property, and when she did not get a response, she conducted a search which revealed that the Respondents had fraudulently registered a sublease dated 6th June 2023 and had been issued title No I.R 264110 in consideration of Kshs 2,850,000/=
5. He averred that the sublease was signed by two directors and added that the Applicant Company did not receive any payment. He denied having signed the sublease and claimed that his signature was forged and was currently under investigation by the DCI Nairobi.
6. He went on to state that sometime in September 2024, members of the Soho Management Serviced Apartments PLC held a special general meeting during which it was resolved

that the suit property constitutes part of the properties held in common for the benefit of all tenants.

7. Shortly thereafter, Jiang Yi claimed to be the owner of the suit property, and her attempts to renovate it were blocked by Soho Management, which requested a copy of the sublease. Instead of providing the sublease, she responded by sending a series of defamatory emails and threatening messages.
8. He stated that in December 2024, Jiang Yi visited the suit premises, changed the locks without permission from the Applicant or Soho Apartment Management PLC, and attempted to find a tenant despite warnings from the management company.
9. That on 21st January 2025, Jiang Yi delivered an unsigned tenancy agreement dated 15th January 2025 purporting to rent out the suit property to Rahma Aden Dubow.
10. The Applicant is apprehensive that, unless the court issues an injunction, the Respondents will rent out the suit property. The deponent asserted that the Respondents should not be allowed to benefit from the fraud.

THE RESPONDENTS' CASE

11. The Respondents opposed the application through the replying affidavit of Jiang Yi dated 11th March 2025.
12. The deponent averred that the Respondents, who own the suit property, granted her a Power of Attorney authorizing her to sign agreements, collect rent, and make all necessary payments related to the suit property on their behalf.
13. She asserted that the suit property is the subject of interest amongst the directors.
14. She stated that the Respondents purchased the suit property and that the transfer of the sublease was registered against title No. I.R 198462.
15. She further stated that she submitted the lease agreement for forensic analysis, and the document examiners confirmed that the signature belonged to Liu Yong.
16. She maintained that the Respondents acquired legal ownership of the suit property, which cannot be bequeathed via resolution.
17. In conclusion, she stated that the Applicant has not met the requirements for the grant of an injunction and urged the court to dismiss the application with costs.

THE RESPONSE

18. In a supplementary affidavit dated 10th April 2025, the deponent averred that Jiang Li does not have authority to represent the Respondents, as the filing of this suit is not part of the transactions specified in the power of attorney.
19. He further averred that Jiang Li has no capacity to sign any legal documents because he does not have a work permit and is not recognized as an agent under Order 9 Rule 2 of the Civil Procedure Rules.
20. The second application is a Notice of Motion dated 31st January 2025, brought under Order 40 Rules 1, 2, and 4 of the Civil Procedure Rules, Sections 1A, 1B, and 3A of the Civil Procedure Act, in which the Applicant seeks the following orders:-
- a) ***Spent.***
 - b) ***The Applicant herein be granted leave to be joined as an Interested Party and allowed to participate in the proceedings.***
 - c) ***The suit be struck out and/or dismissed.***

d) This Honourable court be pleased to issue such other and/or further orders as it shall be necessary for the ends of justice to be met.

e) That the costs of the application be provided for.

21. The application is premised on the grounds appearing on its face together with the supporting affidavit of Qin Minxue, sworn on even date.

TH APPLICANT'S CASE

22. The Applicant averred that he is both the majority shareholder and the managing director of the Plaintiff company, and therefore, he should be included in these proceedings.

23. He further contended that the suit and the appointment of the firm of Mutuohoro Gakuru & Co. Advocates was done without notice or approval from the Plaintiff's shareholders or directors.

24. He stated that the authority to plead and sue was prepared by the firm of Mutuohoro Gakauru & Company Advocates instead of the company, and was not properly executed by all directors or shareholders.

25. The deponent contends that the suit is incurably defective as it offends the provisions of the Companies Act, the Civil Procedure Rules, and the Plaintiff's Memorandum of Association.

26. He maintained that he is the managing director authorized to sign and swear any documents on behalf of the company. He asserted that the suit is an abuse of the court process, as the company has no sustainable claim against the Defendants.

THE RESPONDENTS' CASE

27. The Plaintiff/Respondent opposed the application through the affidavit of Liu Yong dated 11th February 2025.

28. He argued that the firm of Metto & Company Advocates cannot represent the Interested Party because doing so would violate Rule 9 of the Advocates Practice Rules.

29. It was also argued that the firm of Metto & Company Advocates could serve as a potential witness because it participated in the fraudulent registration of shares for the Respondents

30. He maintained that the firm of Metto & Company Advocates is in a serious conflict of interest because they represented the

Plaintiff/Applicant in HCCOMMPET E013 OF 2022, which is relevant to this suit and is still pending in court.

31. Based on the foregoing, the deponent contended that the pleadings drawn by the firm of Metto and Company Advocates are inadmissible.

32. He further contended that the Intended Interested Party failed to disclose to the court that he is married to Jiang Yi, the Respondents' agent.

33. The deponent contends that the application is an abuse of the court process as it fails to meet the threshold outlined in the Mutunga Rules. He maintained that the suit and the Advocates are properly before the court, having complied with the necessary procedures.

THE RESPONSE

34. In a further affidavit dated 10/04/2025 the Applicant asserted that Rule 9 of the Advocates (Practice) Rules is inapplicable in the present matter as it relates to coaching or permitting coaching of any witness in the evidence they may give to the court, tribunal or to an arbitrator.

35. He maintained that the registration of shares was conducted in strict compliance with law and there was no fraudulent activity as alleged.
36. He argued that the firm of Metto & Co Advocates was not conflicted as its involvement in HCCOMPET E013 of 2022 does not preclude its representation of his interest in this case, and that the issues in that suit are distinct from the current suit.
37. The deponent contends that the shareholders held no meeting to discuss the institution of this suit against the Defendants. He further contended that he was not given any notice inviting him to attend the meeting held on 17th January 2025.
38. Both applications were canvassed by way of written submissions.

THE PLAINTIFF'S SUBMISSIONS

39. The Plaintiff/Applicant filed its submissions dated 10th April 2025. On behalf of the Applicant, Counsel outlined the following issues for the court's determination: -

a) Whether the Intended Interested Party ought to be enjoined as a party?

b) Whether the Applicant is deserving of the orders sought?

c) Costs.

40. On the first issue, Counsel submitted that the Intended Interested Party's application is based on the wrong provisions of the law. Counsel further relied on the contents of the replying affidavit to submit that the firm of Metto and Company Advocates has violated Rule 9 of the Advocates Rules, which prohibits Advocates from appearing for a party when they are potential witnesses in the case and where there is a conflict of interest. To buttress this point, reliance was placed on the case **of David Mereka t/a Mereka & Co Advocates v County Government of Nairobi (2021) eKLR**

41. Counsel submitted that the firm of Metto and Company Advocates represents the Plaintiff company in HCCOMMPET E013 of 2022, which is still active in court, and also represents the Defendants in the registration of shares related to the suit property.

42. Regarding the issue of joinder, Counsel argued that the Intended Interested Party has not disclosed his personal stake in the proceedings or the prejudice he might face due to non-joinder. To this end, reliance was placed on the Supreme Court case **of Francis Kariuki Muruatetu & Another vs Republic & 5 others as consolidated with 16 of 2013 (2016) eKLR,** which established the principles of joinder.

43. It was submitted that the Interested Party is seeking to protect his wife, the Respondents agent and to aid them to reap from the benefits of fraud.

44. It was submitted that the Plaintiff's directors have authority to instruct Counsel to institute the suit with or without a resolution. To support this argument, reliance was placed on the case of **Arthi Highway Limited vs West End Butchery Limited & 6 others (2015) eKLR.**

THE INTENDED INTERESTED PARTY'S SUBMISSIONS

45. The Intended Interested Party filed his submissions dated 21st March 2025.

46. On his behalf, Counsel outlined the following issues for the court's determination:-

a) Whether the intended interested Party should be enjoined in this suit?

b) Whether the suit is properly on record?

c) Who shall bear the cost of the application?

47. On the first issue, Counsel submitted that joinder of the Applicant to the plaint will assist the court to adjudicate the issues in dispute effectively. It was submitted that the Applicant, being a director and majority shareholder, has a direct and substantial interest in the proceedings herein. It was further submitted that the Applicant would be prejudiced if he is not joined in the proceedings.

48. Regarding the second issue, Counsel submitted that the suit was instituted without prior notice or participation of the Plaintiff's directors or the shareholders approving the appointment of the firm of Mutuahoro Gakuru and Company Advocates to act on behalf of the firm. Counsel further submitted that no shareholders' meeting was held to deliberate or authorize the commencement of this suit against the Defendants.

49. Counsel contends that the purported resolution, notice, minutes, and letter appointing the firm of Mutuohoro Gakuru and Company Advocates are an afterthought, as they were not filed at the same time as the suit but were introduced following the application dated 31st January 2025.

50. Counsel further contended that the Intended Interested Party was not issued with a notice inviting him to attend the alleged meeting held on 17th January 2025. Counsel argued that the Plaintiff's Advocate issued the Special Notice on the same date the meeting was to be held, contrary to the provisions of Section 281 of the Companies Act 2015, which mandates a minimum of 21 days' notice for special resolutions. To buttress this point, reliance was placed on the case of **Wambeye Kimweli Markia v Board of Directors, Nzoia Water Services Co. Ltd & 2 others; Nzoia Water Services Co. Ltd & 2 others; Nzoia Water Services Co. Ltd (Interested Party) (2021) eKLR**

51. Counsel submitted that the suit herein is incompetent as there was no company resolution authorizing Liu Yong to swear the verifying affidavit. To support this argument, reliance was

placed on Order 4 Rule 14 of the Civil Procedure Rules, which provides as follows:-

“Where the Plaintiff is a corporation, the verifying affidavit shall be sworn by an officer of the company duly authorised under the company seal to do so.”

52. Counsel further submitted that the Plaintiff Company has no sustainable claim against the Defendants because the Interested Party received the full purchase price for the suit property and the transaction was duly completed in accordance with the law. Counsel maintained that the Defendants are the bona fide purchasers for value without notice, having paid the agreed consideration.

53. Concluding his submissions, Counsel urged the court to dismiss the application with costs.

ANALYSIS AND DETERMINATION

54. Having considered the application in light of the pleadings, the respective affidavits and the rival submissions, the following issues fall for determination:-

- a) Whether the Applicant has met the threshold for the grant of an injunction?*
- b) Whether the Plaintiff's suit should be struck out?*

c) *Whether the Interested Party should be joined in the proceedings herein?*

55. The principles for the grant of an injunction were laid down in the celebrated case of **Giella -vs- Cassman Brown & Co Ltd 1973 EA 358** as follows:-

1. ***First, the Applicant must show a prima facie case with a probability of success.***
2. ***Secondly, an interlocutory injunction will not normally be granted unless the Applicant might otherwise suffer irreparable harm which would not be adequately compensated by an award of damages.***
3. ***Thirdly, if the court is in doubt, it will decide an application on a balance of convenience.***

56. The first issue for determination is whether the Applicant has established a prima facie case with a probability of success. In **Mrao Ltd vs First American Bank of Kenya Ltd & 2 Others [2003] eKLR**, the Court of Appeal defined a *prima facie* case as follows:-

“A prima facie case in a civil application includes but is not confined to a genuine and arguable case”. It is a case 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.”

57. The Applicant claims ownership of the suit property. The Applicant argues that the lease was fraudulently registered because his signature was forged. The deponent stated that he did not sign the lease and that the Applicant did not receive proceeds from the sale.

58. From the pleadings, it is clear that both parties are claiming ownership of the suit property. The Applicant maintains that the suit property is part of the properties held in common for the benefit of all tenants, while the Respondents argue that they are the bona fide purchasers for value without notice. At this stage, the court is not required to determine the issues that will be canvassed at the trial. The court is aware that at the interlocutory stage, it is not required to make any definitive conclusion on the matters that are in controversy.

59. In the case of **Mbuthia vs Jimba Credit Corporation Ltd (1988) KLR**, the court held that;

“In an application for interlocutory injunctions, the court is not required to make final findings of contested facts and law and the court should only weigh the relative

strength of the parties cases.”

60. Similarly, in the case of **Edwin Kamau Muniu Vs Barclays Bank of Kenya Ltd NBI HCCC NO 1118 of 2002**, the court held that;

“In an interlocutory application, the court is not required to determine the very issues which will be canvassed at the trial with finality. All the court is entitled to at this stage is whether the Applicant is entitled to an injunction sought on the usual criteria.”

61. Based on the evidence placed before me, this court finds and holds that the Applicant has not established a prima facie case with a probability of success.

62. The conditions outlined in the **Giella vs Cassman Brown Case (Supra)** are to be considered sequentially.

63. In so finding, I am persuaded by the holding in the case of **Nguruman Limited vs Jan Bonde Nielsen & 2 Others [2014] eKLR** where the Court of Appeal stated as follows: -

“...these are the three pillars on which rest the foundation of any order of injunction,

interlocutory or permanent. It is established that all the above three conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially... if the applicant establishes a prima facie case that alone is not sufficient basis to grant an interlocutory injunction, the court must further be satisfied that the injury the respondent will suffer, in the event the injunction is not granted will be irreparable. In other words, if damages recoverable in law are an adequate remedy and the respondent is capable of paying, no interlocutory order of injunction should normally be granted, however strong the applicant's claim may appear at that stage. If prima facie case is not established, then irreparable injury and balance of convenience need no consideration".

64. Having found that the Applicant has not established a *prima facie* case with a probability of success, it will be immaterial to

delve into the other limbs that are to be considered for a grant of a temporary injunction.

65. In the case of **Commercial Finance Co. Ltd vs Afraha Education Society & Others C A Civil Appeal No. 142 of 1999**, the court held that:-

“.....the judge should address himself sequentially on the conditions for granting an injunction instead of proceeding straight away to address himself on the third condition because where the Applicant has no registered interest in the land comprised in the title dispute and thereof has not demonstrated that it has a prima facie case with a probability of success no interlocutory injunction would be available.”

66. Regarding the second issue, the court has power to strike out pleadings under Order 2 Rule 15(1) of the Civil Procedure Rules, which provides as follows:

At any stage of the proceedings the court may order to be struck out or amended any pleading on the ground that:-

a) It discloses no reasonable cause of action or defence in law;

- b) It is scandalous, frivolous or vexatious; or***
- c) It may prejudice, embarrass or delay fair trial of the action; or***
- d) It is otherwise an abuse of the process of the court and may order the suit to be stayed or dismissed or judgment to be entered accordingly as the case may be.***

67. In the case of **Co-operative Merchant Bank Ltd v George Fredrick Wekesa (Civil Appeal No. 54 of 1999)** the Court of Appeal held that:

“Striking out a pleading is a draconian act, which may only be resorted to, in plain cases...Whether or not a case is plain is a matter of fact...Since oral evidence would be necessary to disprove what either of the parties says, the appellant’s defence cannot be said to present a plain case of a frivolous, scandalous, vexatious defence, or one likely to prejudice, embarrass or delay the expeditious disposal of the respondent’s action or which is otherwise an abuse of the process of the court.”

68. Striking out pleadings is a draconian act which may only be resorted to in plain cases. The court must therefore exercise the powers to strike out a suit with the greatest care.

69. The Intended Interested Party contends that the suit offends the provisions of the Company Act as the Plaintiff did not file

an authority to sue on behalf of the company or obtain authority to appoint the firm of Mutuohoro Gakuru & Company Advocates. It is settled law that where a suit is to be instituted on behalf of the company, there should be a company resolution to that effect. The requirement is intended to protect companies from unauthorized court processes.

70. The question that begs to be answered is whether it is mandatory to file a resolution of a company alongside the Plaintiff.

71. The court of appeal has settled the issue in several decisions where it has been held that failure to file the resolution by the board of directors is not fatal to the suit, as the same may be filed any time before the suit is fixed for hearing.

72. In the case of **Leo Investment Ltd vs Trident Insurance Company Limited(2014) ECLR, the Court held that:-**

“... such a resolution by the Board of Directors of a company may be filed at any time before the suit is fixed for hearing as there is no requirement that the same be filed at the same time as the suit. Its absence is therefore not fatal to the suit”.

73. This court is in agreement with the above decisions. The mere fact that the Plaintiff did not file a resolution authorizing him to file the suit on behalf of the company is not a ground for invalidating the suit.

74. On whether the firm of Metto and Company is conflicted, the Plaintiff/Applicant did not produce the pleadings in HCCOMMPET EO13 of 2022 to enable the court to establish whether it is acting for both parties.

75. Regarding the issue of joinder, the law governing joinder of parties is grounded on Order 1 Rule 10(2) of the Civil Procedure Rules which provides as follows;

“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 to effectually and completely to adjudicate upon or settle all questions involved in the suit, be added.”

76. The **Black’s Law Dictionary (8th Edition) page 3548** defines an Interested Party as follows;

“a party who has a recognizable stake and therefore a standing in the matter.”

77. The Supreme Court of Kenya in **Communications Commission of Kenya and 4 Others ...Vs... Royal Media**

Services Limited & 7 Others Petition No. 15 OF [2014]
eKLR relied on its earlier decision in the MUMO
MATEMO case where it defined an Interested Party as follows:

“An interested party is one who has a stake in the proceedings, though he or she was not party to the cause ab initio. He or she is one who will be affected by the decision of the Court when it is made, either way. Such a person feels that his or her interest will not be well articulated unless he himself or she herself appears in the proceedings, and champions his or her cause. Similarly, in the case of Meme Vs. Republic, [2004] 1 EA 124, the High Court observed that a party could be enjoined in a matter for the reasons that:-

(i) Joinder of a person because his presence will result in the complete settlement of all the question involved in the proceedings;

(ii) Joinder to provide protection for the rights of a party who would otherwise be adversely affected in law;

(iii) Joinder to prevent a likely course of proliferated litigation.

We ask ourselves the following questions:-

a) what is the intended party’s state and relevance in the proceedings and

b) will the intended interested party suffer any prejudice if denied joinder.”

78. In the case of **Trusted Society of Human Rights Alliance Vs Mumo Matemo & 5 Others (2015) eKLR** the Court held that;

“An interested party is one who has a stake in the proceedings, though he or she was not party to the cause ab initio. He or she is one who will be affected by the decision of the court when it is made either way. Such a person feels that his interest will not be well articulated unless he himself or she herself appears in the proceedings and champions his or her cause.”

79. These are persuasive decisions that state the legal position with regard to joinder of Interested Parties. In the matter at hand, it is not in dispute that the Applicant is a director and shareholder of the Plaintiff Company. He therefore has an identifiable stake in the proceedings herein.

80. In the end, I find that the application dated 22nd January 2025 is devoid of merit and the same is hereby dismissed with costs. The application dated 31st January 2025 partially succeeds in the following terms:-

a) The Applicant is granted leave to join the proceedings as an interested Party and to participate in the

proceedings.

b) The Respondent is awarded costs of the application.

To preserve the suit property, I hereby direct that it shall not be sold pending the hearing and determination of his suit.

RULING SIGNED, DATED, AND DELIVERED VIA MICROSOFT TEAMS THIS 24TH DAY OF OCTOBER, 2025

.....
HON. T. MURIGI
JUDGE

IN THE PRESENCE OF: -

Gakuru for the Plaintiff/Applicant

Alakonya for the Defendant.

Ahmed - Court Assistant