



**Karuga v Mwangi & another; Chui Mall Limited & 3 others
(Interested Parties) (Miscellaneous Application E629 of 2024)
[2025] KEHC 15398 (KLR) (Commercial and Tax) (30 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15398 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E629 OF 2024**

**PM MULWA, J
OCTOBER 30, 2025**

BETWEEN

DIANA MARY WANJIKU KARUGA PLAINTIFF

AND

JULIUS CHUI MWANGI 1ST DEFENDANT

ANDREW MWANGI NJATHI 2ND DEFENDANT

AND

CHUI MALL LIMITED INTERESTED PARTY

SHAURI MOYO DEVELOPERS LIMITED INTERESTED PARTY

REGISTRAR OF COMPANIES INTERESTED PARTY

THE HON. ATTORNEY GENERAL INTERESTED PARTY

RULING

1. This ruling relates to a Notice of Motion application dated 8th August 2024, brought under the provisions of Sections 238 and 239 of the *Companies Act* No. 17 of 2015, Order 40(1), 2, 3 of the Civil Procedure Rules, Section 1A and 1B of the *Civil Procedure Act* and all the enabling provisions of the law.
2. The Plaintiff herein (“the Applicant”) seeks the following substantive orders:
 - a. That leave be granted to the Applicant to continue this suit as a derivative action.



- b. That pending the hearing and determination of the suit, a conservatory order be issued restraining the Respondents, whether jointly or severally, from transferring, assigning, disposing of, dissipating, or in any other manner dealing with the assets of Chui Mall Limited, including funds held at Co-operative Bank of Kenya, Nakuru Branch, Account No. XXXXXXXXXXXXX, and from making decisions affecting the company's business, assets, or deposits without the Applicant's consent.
3. The application is premised on the grounds that Chui Mall Limited was incorporated on 10th April 2014, with nine (9) shareholders. The late Andrew Mwangi Chui was the majority shareholder, holding 78 shares, until his demise on 10th January 2023. The company owns property known as L.R. No. CPR/2014/152145, situated along the Nairobi–Nakuru Highway at Pipeline Area, currently leased to Olympic Petroleum Limited, which operates a petrol station on the premises.
4. It is contended that the Defendants, who are now purporting to act as directors of the company, visited Olympic Petroleum Limited and introduced themselves as such, directing that rent payments be made to a new bank account. They allegedly produced falsified documents, including purported board minutes and an affidavit claiming that Andrew Mwangi Chui had resigned and transferred his shares to Julius Chui Mwangi and Andrew Mwangi.
5. The Applicant avers that a fraudulent resignation letter was lodged with the Registrar of Companies, resulting in alteration of the company's directorship and reduction of directors from nine to five. The Applicant alleges that the Defendants have conspired to defraud the company and its rightful beneficiaries, and that immediate intervention by this Court is necessary to protect the company's assets.
6. In opposition, Julius Chui Mwangi, on behalf of the 2nd Respondent, filed a Replying Affidavit sworn on 18th October 2024, and a Further Affidavit sworn on 18th December 2024. He avers that the application is made in bad faith and is an attempt to mislead the Court.
7. The Respondents contend that the deceased, Andrew Mwangi Chui, had two wives, Diana Wanjiku Kimani and Jemimah Wanjiku Mwangi and that the Applicant, being a grandchild of the deceased, is acting solely to advance her personal family interest, not that of the company.
8. It is their position that prior to his death, the deceased had nominated the Defendants to collect lease payments from Olympic Petroleum Limited and to manage the company affairs on behalf of the Nakuru family, in accordance with his wishes. They argue that the actions taken were done pursuant to that authority, and that the shares of the deceased in Chui Mall Limited lawfully belong to the Nakuru family.

Analysis and determination

9. From the pleadings and submissions, the issues that fall for determination are:
 - i. Whether the Applicant has met the threshold for leave to continue this suit as a derivative action.
 - ii. Whether the Applicant is entitled to the conservatory orders sought.
10. A derivative claim is an action brought by a member of a company in respect of a cause of action vested in the company and for the company's benefit. The requirement for leave of the Court serves to ensure that such an action is brought in good faith and in the best interests of the company, and not for collateral or personal motives



11. Section 238 (1) of the *Companies Act* No. 17 of 2015, defines “a derivative claim” as follows;

“In this Part, “derivative claim” means proceedings by a member of a company—

 - a. in respect of a cause of action vested in the company; and
 - b. seeking relief on behalf of the company.
12. The provisions of Section 238 (2) to (5) further provides the circumstances under which a derivative claim may only be brought. Further, Section 239 of the Act sets out the procedure to be followed before a derivative claim may proceed.
13. In summary, a member seeking to continue such an action must apply for leave of the Court, and the Court must be satisfied, upon consideration of the evidence, that a case has been made out for permission. If no such case is disclosed, the Court must dismiss the application. Where a prima facie case is disclosed, the Court may grant permission on such terms as it considers just, or issue further directions as appropriate.
14. The guiding principles for grant of leave to bring or continue a derivative suit were articulated in *Ghelani Metals Limited & 3 Others v Elesh Ghelani Natwarlal & Another* [2017] eKLR, where the Court held that an applicant must demonstrate (a) a prima facie case of wrongdoing to the company, (b) that the wrongdoers are in control and would not cause the company to sue, and (c) that the applicant is acting in good faith.
15. Applying the above principles to the present case, the Court observes that the Applicant has placed before it material alleging alteration of the company’s records, wherein the composition of the company’s board of directors was irregularly reduced from nine (9) to five (5) members, and the Applicant was unlawfully removed as a director. Further allegations have been made regarding the purported resignation of the deceased director and the unauthorized transfer of shares to the Defendants/Respondents without requisite approvals or adherence to due corporate procedure.
16. These acts, if ultimately proven at trial, would constitute serious breaches of fiduciary duty, mismanagement, and fraudulent conduct to the detriment of the company and its legitimate shareholders. The impugned minutes dated 20th October 2022, which purport to authorize the Respondents to act on behalf of the company, also show that the Applicant was neither present nor represented at the alleged meeting. This omission casts significant doubt on the authenticity, validity, and regularity of the said minutes and the resolutions purportedly passed therein.
17. In view of the foregoing, this Court is persuaded that the Applicant has established a prima facie case warranting the grant of leave to continue the action derivatively on behalf of Chui Mall Limited. The Respondents, being the alleged perpetrators of the impugned acts, cannot be expected to permit the company to act against them.
18. On the element of good faith, there is nothing on record to suggest that the Applicant is actuated by malice, ulterior motive, or personal vendetta. The Applicant’s pursuit of this action appears to stem from a genuine concern over the propriety of corporate affairs and protection of the estate’s interest in the company. The Court therefore finds that the requirement of good faith is satisfied.
19. With regard to the Respondents’ argument that the Applicant lacks locus standi for being merely a family member of the deceased director, this contention is premature. Section 238(6) of the *Companies Act* expressly allows a derivative claim to be brought by a member or by a person to whom shares have



been transmitted by operation of law. Whether the Applicant's membership or representation of the deceased's estate is valid are questions of fact that will be determined at trial upon full evidence.

20. Accordingly, the Court is satisfied that the Applicant meets the statutory and judicial thresholds for the grant of leave, and the same is hereby allowed.

On the issue of conservatory order

21. The principles governing the grant of interlocutory injunctions were restated in *Giella v Cassman Brown & Co. Ltd* [1973] EA 358 to wit the applicant must establish a prima facie case with a probability of success; the applicant stands to suffer irreparable harm not compensable in damages; and if in doubt, the court will determine the matter on a balance of convenience.

22. The Applicant has demonstrated that the company's assets and funds are at risk of being dissipated through unauthorized dealings. The potential loss of corporate assets and alteration of shareholding and directorship cannot be adequately compensated by damages. The balance of convenience therefore tilts in favour of preserving the status quo ante pending determination of the suit.

23. In light of the foregoing, I find the application dated 8th August 2024 is merited and I make the following orders:

- i. Leave is hereby granted to the Plaintiff, Diana Wanjiku Kimani , to continue this suit as a derivative action on behalf of Chui Mall Limited .
- ii. A conservatory order is hereby issued restraining the Respondents , their agents, servants, or assigns from transferring, assigning, disposing of, dissipating, or in any manner dealing with the assets of Chui Mall Limited , including funds held at Co-operative Bank of Kenya, Nakuru Branch, Account No. XXXXXXXXXXXXXX , pending the hearing and determination of the suit;
- iii. Costs of this application shall be in the cause.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 30TH DAY OF OCTOBER 2025.

P.M. MULWA

JUDGE

In the presence of:

Mr. Muiruru for Applicant

Mr. Maina for Respondents

Court Assistant : Carlos

