



**Kaumbuthu v Simrak Construction Company Limited & 4 others (Family Miscellaneous Application E012 of 2025) [2025] KEHC 15490 (KLR) (30 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15490 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
FAMILY MISCELLANEOUS APPLICATION E012 OF 2025  
FN MUCHEMI, J  
OCTOBER 30, 2025**

**BETWEEN**

**GLORY KAGWERIA KAUMBUTHU ..... APPLICANT**

**AND**

**SIMRAK CONSTRUCTION COMPANY LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**STEPHEN KATHURIMA KINOTI ..... 2<sup>ND</sup> RESPONDENT**

**JOEL KINYUA IMITIRA ..... 3<sup>RD</sup> RESPONDENT**

**SBM BANK OF KENYA ..... 4<sup>TH</sup> RESPONDENT**

**EQUITY BANK ..... 5<sup>TH</sup> RESPONDENT**

**RULING**

**Brief facts**

1. The application for determination dated 8<sup>th</sup> April 2025 seeks for orders to issue the applicant with bank statements and access to the account numbers XXXXXXXXXXXXX Equity Bank Kasarani Branch and XXXXXXXXXXXXX Chase Bank now SBM Bank Landmark Plaza Branch belonging to Simrak Construction Company Limited and control over account numbers XXXXXXXXXXXXX Equity Bank Kasarani Branch and XXXXXXXXXXXXX Chase Bank now SBM Bank Landmark Plaza Branch belonging to Simrak Construction Company Limited as the majority shareholder under her veto power and resolution.
2. In opposition to the application, the 2<sup>nd</sup> and 3<sup>rd</sup> respondents filed replying affidavits both dated 10<sup>th</sup> June 2025.



### **The Applicant's Case.**

3. The applicant states that she is the majority shareholder and director of Simrak Construction Company Ltd which she and the 2<sup>nd</sup> respondent in 2013, with 150 ordinary shares whereas the 2<sup>nd</sup> respondent is the other shareholder and director of the 1<sup>st</sup> respondent with 50 ordinary shares and the 3<sup>rd</sup> respondent was her husband and signatory to the company's accounts held in Equity Bank and SBM Bank with delegated authority. Upon registering the company, the applicant states that she became the manager of the company while the 2<sup>nd</sup> respondent became the finance manager and he was in charge of the company's finances together with the 3<sup>rd</sup> respondent.
4. The applicant avers that they opened account number XXXXXXXXXXXXX Equity Bank Kasarani Branch and XXXXXXXXXXXXX Chase Bank now SBM Bank Landmark Plaza Branch for the company. A resolution was passed that the 2<sup>nd</sup> and 3<sup>rd</sup> respondents be appointed as signatory of the bank accounts together with one James Mutari Muthaura.
5. The applicant avers that they ran the company with the 2<sup>nd</sup> respondent and they used the income to invest in their family including acquiring properties which they developed. The applicant states that she included her husband only as a spouse but he did not hold any position in the company at the time and thus when the marriage broke down, the 3<sup>rd</sup> respondent took over the company through hostilities and excluded her from it and is currently running the company to her exclusion.
6. The applicant avers that the 2<sup>nd</sup> respondent is colluding with the 3<sup>rd</sup> respondent to deny her access to the company's account despite having made several demands to be allowed. The applicant is apprehensive that the respondents are misappropriating funds held in the accounts as they have denied her access.
7. The applicant filed a Further Supporting Affidavit dated 17<sup>th</sup> April 2025 and states that the 2<sup>nd</sup> respondent, her ex husband resigned from being a director of the 1<sup>st</sup> respondent. Despite his resignation, he continues to encumber the operations of the company and has contributed to blocking her access to the company's account. The applicant further states that the annexed CR12 shows that as at May 2015 the 3<sup>rd</sup> respondent was not a director of the company thus it is inconceivable as shown in the letter dated 9<sup>th</sup> August 2016 that he was still a director.

### **The 2<sup>nd</sup> Respondent's Case.**

8. The 2<sup>nd</sup> respondent states that the 1<sup>st</sup> respondent had initially been registered as a business name as BN/2010/76696 but is now a private limited liability company duly incorporated and registered on 27<sup>th</sup> March 2013. The company has 1,000 issued shares of which only 200 shares have been allotted to shareholders. The founding subscribers of the 1<sup>st</sup> respondent were Stephen Kathurima Kinoti- 5-0 shares; Joseph Kiriinya Kinoti – 50 shares later transferred to the 3<sup>rd</sup> respondent to hold in trust and Joel Kiriinya Imitira – 100 shares subsequently became the holder of 150 shares after the transfer.
9. The 2<sup>nd</sup> respondent states that currently, he is a co-director/shareholder of the 1<sup>st</sup> respondent with the applicant who is the estranged wife of the 3<sup>rd</sup> respondent. The 3<sup>rd</sup> respondent is the Managing Director and former director and shareholder of the 1<sup>st</sup> respondent. Contrary to the applicant's allegations, she is not a founding member, director or subscriber as her purported acquisition of 150 shares in May 2015 is premised on a contested transfer by her estranged husband, the 3<sup>rd</sup> respondent, without any fair value payment consideration. Both the Memorandum and Articles of Association and CR12 dated 19<sup>th</sup> March 2015 confirm that the 3<sup>rd</sup> respondent was one of the three founding directors of the company from 2012 to 2015. Thus it was the 3<sup>rd</sup> respondent who invited the applicant into the company.



10. The 2<sup>nd</sup> respondent avers that the 1<sup>st</sup> respondent is registered with the National Construction Authority under various contractor categories and the company has never made any profits since incorporation thus never declaring or paying dividends. The 2<sup>nd</sup> respondent states that he is owed a sum exceeding Kshs. 3.2 million by the 1<sup>st</sup> respondent for the use of his professional certification while the 3<sup>rd</sup> respondent is owed over Kshs. 6 million for unpaid employment services as Managing Director of the company since May 2015. Under Section 286(3) of the Companies Act and Article 24 of the company's articles, the company may only pay dividends out of distributable profits thus a company that has not declared any profits and that has consistently filed nil returns has no legal or financial capacity to declare or pay dividends to shareholders.
11. The 2<sup>nd</sup> respondent argues that the applicant has not provided any evidence that the company has declared dividends through a valid shareholder's resolution and her claim that funds have been diverted lacks documentary support and is rebutted by the company's statutory tax filings and board records. Further, the applicant cannot assert an equitable interest in company finances without evidence of an active capital contribution, participation in company operations such as through voting on resolutions or lawful declaration of shareholder entitlements.
12. The 2<sup>nd</sup> respondent avers that the applicant has never provided professional services or contributed working capital to finance the 1<sup>st</sup> respondent's operations or projects. The 2<sup>nd</sup> respondent further argues that the applicant is not a majority shareholder as she holds 150 shares out of 1,000 which equates to 15% and therefore her claim to majority shareholding as a basis for taking control of company resources lacks legal foundation.
13. The 2<sup>nd</sup> respondent states that the company's banking mandates have always been duly authorized by the board and executed by valid signatories, namely the 2<sup>nd</sup> and 3<sup>rd</sup> respondents. The applicant has consistently executed all board resolutions and instructions to banks authorizing him and the 3<sup>rd</sup> respondent and has never made any formal request for bank statements from the company.
14. The 2<sup>nd</sup> respondent states that no consideration was paid by the applicant for the alleged transfer of shares, implying that they are held in trust for the 3<sup>rd</sup> respondent. Furthermore, the applicant disavowed any beneficial interest in the company vide email correspondence dated 22<sup>nd</sup> January 2021 where she expressly stated that she has not a beneficial owner of the 1<sup>st</sup> respondent, that the 3<sup>rd</sup> respondent was the beneficial owner, that her name had been included illegally and that the company was engaged in unethical dealings. The applicant further demanded that her name be removed from any of the company documents or records. The said email unequivocally communicated an intent to sever ties with the company. Her conduct not only negated her ownership but also shaped the company's reliance in terms of governance and shareholder composition. She did not seek reinstatement or correction through statutory means nor did she retract her disclaimer.
15. The 2<sup>nd</sup> respondent avers that the applicant's belated interest in the company information is clearly intended to weaponize the company's resources and information for use in her matrimonial property dispute.
16. The 2<sup>nd</sup> respondent argues that the powers of directors are collective and must be exercised through properly convened board meetings and resolutions and individual directors unless authorized, cannot unilaterally access company accounts, funds or issue instructions to banks. Furthermore, ownership of shares or status of director does not equate to control of the company's financial accounts. Control of financial operations, including mandates on bank accounts is a matter of corporate governance and internal resolution, not individual entitlement.



17. The 2<sup>nd</sup> respondent asserts that the applicant has not provided any requests to access the company's bank records which comply with the law, statutory procedure and governance processes of the 1<sup>st</sup> respondent. Moreover, arbitration has been listed in the memo as the first stop of any dispute resolution.
18. The 2<sup>nd</sup> respondent asserts that the Data Protection Act 2019 considers financial data as sensitive personal and corporate information that can only be disclosed under strict conditions.
19. The 2<sup>nd</sup> respondent argues that the 1<sup>st</sup> respondent is not matrimonial property for the applicant and 3<sup>rd</sup> respondent and the company has not paid or transferred any money belonging to either of them to the other or invested company finances in any of their properties.
20. The 2<sup>nd</sup> respondent further argues that the applicant does not acknowledge the doctrine of separate legal personality which anticipates that a limited liability company once duly incorporated is distinct from its shareholders and directors and its property, accounts and operations are legally shielded from personal claims. Under matrimonial property law, shares individually registered in the name of one spouse may be declared matrimonial property but does not extend to the assets, liabilities or operational control of the company itself. Furthermore, access to company financial records must comply with statutory procedure and cannot be granted solely on the basis of familial or matrimonial interests.
21. The 2<sup>nd</sup> respondent states that the [Data Protection Act, 2019](#) read together with the [Companies Act](#) provides that where financial records are sought for purposes unrelated to the company's core business, the requesting party must either follow the procedural route under Section 116 of the [Companies Act](#) or seek disclosure through the Family Division by application under the Matrimonial Property Rules with a specific court order.
22. The 2<sup>nd</sup> respondent states that a director who is neither privy to the matrimonial relationship nor a beneficiary of the contested shares is entitled to protection under the [Companies Act](#), under Section 143 and 145 which codify directors' duties to act in good faith and in the best interest of the company and not in personal disputes of shareholders. Furthermore, the right to inspect company records as sought by the applicant is governed by Sections 114-116 of the [Companies Act](#). Section 114(1) gives shareholders the right to receive financial statements and Section 116 provides the procedure to request additional company information. Section 115 restricts the scope of financial access to only financial statements approved by the board and not internal bank transactions.
23. The 2<sup>nd</sup> respondent avers that a crucial factor in accessing equitable rights within a company is the shareholder's contribution to the formation, capitalization or operation of the company. The applicant made no capital contribution, was nominally listed as a director/shareholder and never participated in project execution, management or financial oversight.
24. The 2<sup>nd</sup> respondent states that the applicant has confirmed the existence of a pending matrimonial dispute in the High Court in Kiambu in which she sought access to the company's financial statements and she now seeks similar reliefs in the instant application contrary to Section 6 of the [Civil Procedure Act](#).

### **The 3<sup>rd</sup> Respondent's Case.**

25. The 3<sup>rd</sup> respondent states that he was one of the founding directors and shareholders of the 1<sup>st</sup> respondent which was registered as a business name as BN/2010/76696 and was later incorporated on 27<sup>th</sup> March 2013. The 3<sup>rd</sup> respondent states that from 2012 to 2015 he served as a director/shareholder and he is currently the Managing Director of the company since 2015.



26. The 3<sup>rd</sup> respondent avers that the applicant is his estranged wife and in May 2015, he transferred his 150 shares to her. The said transfer is now contested by the 1<sup>st</sup> respondent as the applicant never paid for the value of the shares transferred to her. the 3<sup>rd</sup> respondent asserts that the transfer of shares to the applicant was not a gift. The applicant has never paid for the value of shares transferred to her. The 3<sup>rd</sup> respondent states that the details of the consideration are not relevant to the company's current operational matters and are more appropriately addressed in the matrimonial proceedings.
27. The 3<sup>rd</sup> respondent states that the company has faced significant financial challenges since its inception and has never made a profit, consequently no dividends have ever been declared or paid.
28. The 3<sup>rd</sup> respondent avers that the applicant's claims regarding the diversion of funds are unsubstantiated as the company's financial records, including tax filings accurately reflect its financial position.
29. The 3<sup>rd</sup> respondent argues that the applicant is primarily motivated by her ongoing matrimonial dispute with him and her attempt to gain control of the company's financial records is an attempt to use company resources for her personal litigation. Furthermore, the company is a separate legal entity and its financial operations should not be subjected to the applicant's personal disputes.
30. The 3<sup>rd</sup> respondent states that the applicant's prior written disavowal of any interest in the company further undermines her current claims.

Her email dated 22<sup>nd</sup> January 2021 clearly states that she is not a beneficial owner and demanded her removal from the company records which constitutes a clear estoppel and waiver of any rights she now asserts. Further, the applicant's attempts to circumvent proper legal procedures and the company's internal governance are detrimental to its operations.

31. The applicant filed a Supplementary affidavit dated 12<sup>th</sup> June 2025 and avers that the reliefs sought are not commercially disruptive in the sense of interfering negatively with the company and if they are disruptive, they are appropriately so in order to secure justice in Matrimonial dispute HCFOs No. 1 of 2022.
32. The applicant states that the 2<sup>nd</sup> respondent has not adduced evidence that the company has 1000 shares of which 200 were allotted and neither is there evidence showing transfer of 50 shares from one Joseph Kinyua Kinoti to the 3<sup>rd</sup> respondent.
33. The applicant asserts that it is a legal and practical aberration for one to be a managing director and a former director of a company which confirms her position that despite the 3<sup>rd</sup> respondent having resigned from directorship vide letter dated 30<sup>th</sup> March 2015 he still purported to act as a director as shown in the letter dated 9<sup>th</sup> August 2016.
34. The applicant avers that her acquisition of 150 shares cannot be challenged in the instant proceedings, the 2<sup>nd</sup> respondent attempts to do so when all along since 2015 he has never raised any known objection to how the same were acquired.
35. The applicant argues that whether or not she was a founding director of the 1<sup>st</sup> respondent is an irrelevant question and as a wife, she provided the 3<sup>rd</sup> respondent with emotional support and was supporting the family in other avenues which is the basis for having formed the 1<sup>st</sup> respondent together.
36. The applicant asserts that the 2<sup>nd</sup> respondent has not produced any evidence to show that the 1<sup>st</sup> respondent has never made any profits and they have been filing nil tax returns. Neither have the respondents shown that the company owes them for unpaid employment services. The only way the



court can ascertain the true position is by ordering the respondents to grant access and control to the accounts to prove the flow of money into the accounts.

37. The applicant states that she has not made any claim on any company assets or funds distributed through liquidation and dividends as the instant application is centred on access and control in a right as a majority shareholder and co-director.
38. The applicant states that the company records dated 7<sup>th</sup> March 2025 from the Registrar of Companies has not been contested by the 2<sup>nd</sup> respondent shows that the total shares the company currently holds is 200, 150 of which she holds herself.
39. The applicant argues that the 2<sup>nd</sup> respondent has admitted that the 3<sup>rd</sup> respondent is a signatory to the bank accounts of the 1<sup>st</sup> respondent yet he claimed that the 3<sup>rd</sup> respondent is a former director. An admission of her assertion that the 2<sup>nd</sup> and 3<sup>rd</sup> respondents have colluded to lock out access and control from her. the 3<sup>rd</sup> respondent resigned from the 1<sup>st</sup> respondent and cannot still be a bank signatory of the company.
40. The applicant avers that the 2<sup>nd</sup> respondent contradicts himself by stating that she has consistently executed all board resolutions but states that she has never been involved in the company operations including board resolutions or lawful declaration of shareholder entitlements.
41. The applicant denies writing and sending the email and in any event, the email itself does not state that she denounced beneficial ownership but distances herself from their corrupt and concealed deals using the 1<sup>st</sup> respondent. the applicant further states that the 2<sup>nd</sup> and 3<sup>rd</sup> respondents having colluded and the 2<sup>nd</sup> respondent being the only available director a board resolution would be a deadlock and she would be denied access to the statements of the company.
42. The applicant argues that company assets or shares are not automatically excluded from being matrimonial property, what is key is that either of the directors are parties to a matrimonial dispute, their shares become matrimonial property capable of division. The applicant asserts that her shares are subject and fall within property implicated in the matrimonial dispute HFCOS E001 of 2022. The applicant further states that as the majority shareholder she holds the highest interest in the company and she has only made a case to assert her right to property under Article 40 of *the Constitution*.
43. The applicant states that the matrimonial dispute in Kiambu High Court has not sought any prayer on the company's financial statement.
44. The applicant further states that the 3<sup>rd</sup> respondent resigned from being a director of the 1<sup>st</sup> respondent vide letter dated 30<sup>th</sup> March 2015 thus it is unclear and malicious how he claims to have become a Managing Director from May 2015.
45. Parties put in written submissions.

### **The Applicant's Submissions.**

46. The applicant relies on Article 35(1)(b) of *the Constitution* and Section 3(a) – (c) and 4(b) of the *Access to Information Act* 2016 and submits that Equity Bank and SBM Bank have a constitutional and statutory duty to ensure they provide information for the enforcement of her right to property in Matrimonial Property Kiambu High Court Case No. HFCOS No. 001 of 2022. The applicant submits that she holds 150 out of 200 ordinary shares of the 1<sup>st</sup> respondent which entitles her to enforce shareholder rights which includes inspection of books of account as stipulated in Section 700 and 701



of the *Companies Act*, participation in management and financial oversight per the fiduciary standards in *Cook vs Deeks* [1916] 1 AC 554 which held that directors must not act against the interest of the company or majority of shareholders. Relying on the decision in *Kabundu Holdings Limited & Another vs Patrick Mukiri Kabundu & 3 Others* [2004] KEHC 1 (KLR), the applicant submits that having been excluded from the activities and access of accounts, she falls outside the confines of the principle of corporate responsibility.

47. The applicant argues that the company only has two directors and thus deadlock situations such as the instant case make it impossible to pass a resolution authorizing bank access. Courts have authority to intervene to preserve corporate integrity. To support her contentions, the applicant relies on the case of *Re Yenidje Tobacco Company Ltd* [1916] 2 Ch 426.
48. The applicant submits that by virtue of her 75% shareholding she holds a controlling interest and equitable rights of veto or direction. Relying on the case of *Re Smith and Fawcett Ltd* [1942] Ch 304, the applicant argues that courts have held that majority control translates to control over affairs limited by articles or a shareholder's agreement. The applicant further submits that being a majority shareholder entitles her to the control of the company and such rights can only be restricted by the company articles of association and not unilateral fiat of one director. The respondents' continued exclusive control over the accounts while denying her access amounts to oppressive conduct under Section 780 of the *Companies Act*, 2015.

#### **The 1<sup>st</sup>, 2<sup>nd</sup> & 3<sup>rd</sup> Respondent's Submissions**

49. The respondents submit that the CR12, Memorandum and Articles of Association and register of members show that the applicant is neither a founding member nor subscriber and no board resolutions or CR12 amendments evidence any official transfer of shares to the applicant. Under Section 24 and 286(3) of the *Companies Act* a shareholder does not acquire a right to company assets, bank accounts or financial control unless such rights are derived from declared dividends or a lawful distribution during liquidation.
50. The respondents submit that the claim by the applicant that she holds an equitable interest in company funds is without basis in law or fact in the absence of a declared dividend, a winding up process and any shareholder resolution conferring such rights. The respondents argue that granting the applicant access to the company's accounts would amount to a judicial override of internal governance with no basis in statute or precedent.
51. The respondents refer to Section 25(c) and 46 of the *Data Protection Act, 2019* and submits that although the applicant seeks to access bank records and accounts she has not produced any evidence to show authority to access company data, that the request satisfies any exception under the Data Protection Act and that the purpose of the access is for lawful company business and not for misuse in a separate matrimonial dispute. The respondents argue that the company's financial records are protected under Section 143 of the Companies Act which prohibits unauthorized access and use outside statutory provisions.
52. Relying on the case of *Salomon vs Salomon* (no citation given), the respondents submit that since no dividends have ever been declared and no liquidation is pending, the company remains a distinct legal entity wholly independent of the applicant's matrimonial disputes.

#### **The Applicant's Supplementary Submissions**

53. The applicant relies on Article 45(3) of *the Constitution*, Section 6(1) of the *Matrimonial Property Act* and the case of *PWK vs JKG* [2015] KECA 535 (KLR) and submits that the fact that a property is



owned in the nature of a company does not take away its matrimonial nature. Therefore access to the company's financial records to ascertain the income generated by the shares is a legitimate matrimonial interest which ought to be granted.

54. The applicant urges the court to bypass the arbitration clause relating to disputes as her constitutional right to property is at stake. To support her contentions, the applicant relies on the case of *Nicholus vs Attorney General & 7 Others; National Environmental Complaints Committee & 5 Others (Interested Parties)* (Petition E007 of 2023) [2023] KESC 113 (KLR) (28 December 2023) (Judgment) and submits that where a party has been effectively locked out of internal mechanisms and is denied access to her own property rights invoking arbitration serves only to obstruct justice.
55. This application was filed as a family Misc. Application and raises issues of the applicant's rights in the first respondent's company where she is holding majority of shares. It is deposed that she holds 150 out of 200 shares whereas the 3<sup>rd</sup> respondent is her estranged husband who was the financial manager of the company until he resigned. The main issues raised herein concern the rights of the applicant in the company as majority shareholder who has been denied access to the bank accounts of the company in several banks for years. In my view, the orders sought cannot be litigated in a matrimonial property cause or in an application of this nature. It is not in dispute that there is a pending Matrimonial Cause in Kiambu High Court. This application if at all, concerns matrimonial property issues ought to have been filed in Kiambu High Court in Kiambu High Court Matrimonial Property Cause (O. S.) No. E001 of 2022. It has not been explained why the applicant had to file this application she calls HC MISC Family Application in this court. Is it forum shopping or what was the motive given that the applicant is represented by a counsel.
56. I have considered the nature of this dispute and I have no doubt in my mind that the issues relate to dispute in the applicant being denied access to the company bank account where she is a shareholder as well as being denied information by the 2<sup>nd</sup> and 3<sup>rd</sup> respondent on the management of the company assets, finances over a long period. These issues ought to be litigated in a commercial court and not under the umbrella of a matrimonial application or suit.
57. The act of the applicant jumping from one high court to another on similar issues baptized as family matter is wrong. This application ought to have been filed in Kiambu High Court if the applicant believed it was a family matter, which I have pointed out that it is not. This is a commercial dispute which has very weighty issues and it ought to have been filed in Kiambu High Court where the matrimonial property case was filed and which is still pending. The said court has more than one judge who can hear and determine the applicant's suits.
58. I reach a conclusion that this application is misconceived and not properly before this court.
59. It is hereby struck out with no orders as to costs based on the director's family relations.
60. It is hereby so ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 30<sup>TH</sup> DAY OF OCTOBER 2025.**

**F. MUCHEMI**

**JUDGE**

