

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MOMBASA
COMMERCIAL & ADMIRALTY DIVISION
PETITION NO. E001 OF 2023

NOMAN ABDULKARIM.....PETITIONER

-VERSUS-

MUNAVARALI ABDULKARIM

EBRAHIMJI MULLA.....1ST RESPONDENT

NAJMUDDIN ABDULKARIM.....2ND RESPONDENT

NAJMUDDIN HASSANALI NOORBHAI.....3RD RESPONDENT

KENYA ADHESIVE PRODUCTS LIMITED.....4TH RESPONDENT

RULING

1. This ruling is with respect to three applications the first of which is a motion by the petitioner dated 26 March 2025. The second application is a chamber summons by the 3rd respondent dated 25 February 2025 and the third application is dated 16 May 2025 by a proposed interested party.
2. These applications have been filed within a petition dated 15 January 2025 and in which the petitioner seeks orders to be granted access to financial and other records of the Kenya Adhesive Products Limited (hereinafter “the company”), the 4th respondent in the petition, and also to be provided with copies of any and all documents to that end.
3. The petitioner also wants this Honourable Court to order an investigation into the affairs of Kenya Adhesive Products Limited and to appoint two competent inspectors to undertake investigations into the company and report to court the results of their investigations within such a period as the court may specify. Finally, he has prayed

for an order that the company does hold a general meeting to discuss company affairs and pass any requisite and necessary resolutions upon submission of the inspection report.

4. In the application dated 25 February 2025, filed in court on 27 February 2025, the 3rd respondent seeks his name to be struck out from the proceedings. The application is expressed to be brought under sections 1A, 18, of the Civil Procedure Act, cap. 21, and Order 1 Rule 14 and Order 2 Rule 15 (1) of the Civil Procedure Rules.
5. According to the affidavit sworn by the 3rd respondent in support of the application, the petitioner is said to have falsely alleged that the 3rd respondent has been running the affairs of the 4th respondent together with the 1st and 2nd respondents, to the petitioner's exclusion and, therefore, to his prejudice.
6. The 3rd respondent contends that he is neither an employee nor an officer in the 4th respondent company and, accordingly, he is not involved in the affairs of the 4th respondent. In particular, he has denied that he is in custody of or has access to the financial records of the company.
7. Even then, the 3rd respondent has admitted that several years back, he provided company secretarial services to the 4th respondent at the instance of an audit firm which he has identified as Messrs. Ebrahim Mulla & Co. His role then was limited to filing of annual returns of

the company although the directors of the company were well-known to him.

8. In 2017, he ceased being the company secretary of the company due to what he has described as his advancing age. When he resigned, he communicated his decision to Mr. Ebrahim Mulla of Messrs. Ebrahim Mulla & Co to whom he also handed over all the company's records which were in his custody. Mulla was to communicate the 3rd respondent's decision to the directors of the company.
9. The petitioner's motion of 26 March 2025 was filed on even date. It is expressed to be brought under section 1004 (1) & (2) of the Companies Act, cap. 486; Sections 1A, 1B, 3, 3A and 63(c) of the Civil Procedure Act, cap. 21 and Order 40 and 51 of the Civil Procedure Rules. The petitioner has sought in the main the following prayers:

“2. That an injunction do (sic) issue to restrain the respondents their, employees, agents or any person whomsoever for them or on their behalf from making any changes in the Board of Directors or shareholding of the 4th respondent pending hearing and determination of this application.

3. That an injunction do (sic) issue to restrain the respondents their, employees, agents or any person whomsoever for them or on their behalf from making any changes in the Board of

Directors or shareholding of the 4th respondent pending hearing and determination of the petition herein.”

10. According to the affidavit sworn by the petitioner in support of the motion, the 4th respondent is a limited liability company duly incorporated in the Republic of Kenya in accordance with the provisions of the Companies Act and that the petitioner is the legal and beneficial owner of 1250 ordinary shares in the company making up 25% of the total share capital of the company. He is also a director of the company.

11. The 1st and 2nd respondents are the petitioner's co-shareholders and co-directors in the company and the 3rd respondent is the company secretary of the company. The other shareholder or director of the 4th respondent company is Esmail Abdulkarim who passed away on 22 June, 2019.

12. The petitioner has sworn that he seeks this Honourable Court's intervention in what he has described as “*the oppressive conduct*” of the 1st, 2nd, and 3rd respondents in the manner that they have been conducting the affairs of the 4th respondent for more than 5 years prior to his filing of the instant petition. According to the petitioner, he has been excluded from the affairs of the company and that the respondents have failed or refused to issue him with any notices for

board meetings or general meetings of the company or provide him with financial records or statements.

13. Nonetheless, on 3 March, 2023, the petitioner received a Whatsapp message from the 1st respondent attaching two notices; one for an Extra Ordinary General Meeting and the other for a Board of Directors Meeting both slated for 27 March, 2025. The notices were signed by Messrs Liroja Services who are alleged to have been the “*incoming company secretaries*”. Subsequently, on 10 March, 2025, the same notices were delivered by the DHL Courier.

14. The agenda for the two meetings included, *inter alia*, changes to the board of directors of the company by adding one Mohamed Najmudin Abdulkarim who is a son of the 2nd Respondent, changes in the shareholding structure of the Company, appointment of Liroja Services as the company secretary for the Company and change of bank mandates of the Company.

15. The petitioner is apprehensive that, what he regards as the respondents’ unlawful actions would have adverse ramifications on him as a director and shareholder of the company since the 1st and 2nd respondents will gain an unfair advantage in the company’s general meetings as well as the board of directors and, in the process, continue oppressing the petitioner.

16. In the third and final application, one Mohammed Najmuddin Abdulkarim sought to be made a party to the proceedings as an interested party among other prayers in his application. Besides seeking the certification of the application as urgent, the proposed interested party sought the following orders:

“2. Pending the hearing and determination of this application, the Honourable Court be pleased to grant leave to the Proposed Interested Party to be joined to these proceedings as an Interested Party.

3. The Honourable Court be pleased to grant leave to the Proposed Interested Party to be joined to these proceedings as an Interested Party.

4. Pending the hearing and determination of this application, this Honourable Court be pleased to issue an order staying the ex parte injunctive order issued on 27 March 2025.

5. This Honourable Court be pleased to issue an order setting aside and discharging the ex parte orders issued on 27 March 2025.

6. This Honourable Court be pleased to issue an order directing the Registrar of Companies to process all changes in respect of

Kenya Adhesive Products Limited lodged by the Company pursuant to the meetings of the board of directors and extraordinary general meeting of the members of Kenya Adhesive Products Limited held on 27 March 2025.”

The proposed interested party also sought for the costs of the application.

17.I must hasten to mention here that a person who is not yet party to proceedings in which an order has been issued cannot be heard to be seeking to set aside that particular order until he has been made a party to the proceedings. To be precise, the prayers for stay and, subsequently, setting aside of the orders granted on 27 March 2025; and, the substantive prayer seeking a mandatory injunction against the Registrar of Companies could not possibly be available to the proposed interested party until such a time that he had been made party to the proceedings.

18.An application where a proposed interested party seeks to be joined to a suit and seeks, in the same application, substantive prayers that would only be available to a person who is a party to the suit, is an untidy application, to say the least. A proper course is for the proposed interested party to be made a party to the suit first and then, once that

order has been made, the interested party can move the court, in his new status as a party to the suit, for any orders as may be appropriate.

19. Where in an application, such as the proposed interested party's application every prayer is contested, the court is left in an awkward position of determining the same application in phases: first dealing with the joinder aspect of the application and; second, disposing of the substantive prayers that the interested party can only argue once he has acquired the standing as a party to the proceedings. This is a practice that ought to be discouraged.

20. That notwithstanding, by an order made on 19 May 2025 the proposed interested party was elevated to the status of an interested party; what remained of his application are the prayers for stay and setting aside of the order of 25 March 2025 and, what in effect is a final mandatory injunction against the Registrar of Companies.

21. Mohammed Najmuddin Abdulkarim, has sworn in support of the application that he is the executor of the Estate of his late uncle Esmail Abdulkarim Ebrahimjee who was a shareholder of Kenya Adhesive Products Limited. According to Abdulkarim, the 4th respondent is a family-owned company established by four brothers. These are the petitioner, the 1st and 2nd respondents and late Esmail Abdulkarim Ebrahimjee. The 2nd respondent is Abdulkarim's father and, therefore,

the petitioner, the 1st respondent and the late Esmail Abdulkarim Ebrahimjee are Abdulkarim's uncles.

22. Besides being Esmail's nephew, Abdulkarim is also the sole beneficiary of Esmail's Estate and, in proof of this fact, he has exhibited a confirmed grant of probate issued by this Honourable Court on 25 January 2022. Among other properties that his uncle Esmail bequeathed him are his shares in the 4th Respondent.

23. Abdulkarim has taken issue with the petitioner for not citing the estate of his uncle despite the Estate being a 25% shareholder in the 4th respondent. He has also sworn that he is aware that the 3rd respondent is not a shareholder in the 4th respondent. Although he previously served as the company secretary he retired in 2017. His joinder as a respondent in this matter is unnecessary and arises solely from the 4th respondent's inability to be linked to the online Business Registration Service (BRS) portal in order to update and register his resignation.

24. The interested party has also sworn that he has always maintained a keen interest in the family business and this interest informed his decision to pursue further studies in Chemical Engineering and Applied Chemistry in Australia. Upon his return to the country, he was invited by his uncles to join the 4th respondent as the company manager. The petitioner raised no objection to the interested party's

appointment and, in fact, expressly consented to his contribution to the family's business.

25. In the interested party's capacity as the company manager, he has strived to ensure the continued growth of the business and to preserve the legacy of the 4th Respondent. This has been evident through the expansion of production capacity, product diversification and change in marketing strategies to keep the adhesive business relevant.

26. As the company manager and the beneficiary of the estate of his late uncle's 25% shares, the interested party was invited to attend the meetings of the 4th respondent's Extraordinary General Meeting and the Board of Director's meeting scheduled for 27 March 2025. On the same date, he was served with a ruling from this court though he was not party to the court proceedings. The meeting proceeded as planned and as part of the resolutions, the transfer of the shares to the interested party was approved and the interested party was also appointed as a director of the company.

27. The petitioner was served with the notices for the Meetings on 3 March 2025, being more than 21 days to the date of the meetings, in accordance with the legal requirement that all shareholders and directors be duly notified of any intended meeting. The petitioner is alleged to have decided not to respond to the notices of the meetings and did not comment on the agenda of the meetings either. On 27

March 2025, the petitioner decided not to attend the company meetings.

28. The petitioner is said to have voluntarily withdrawn from the management and operations of the 4th respondent following a dispute concerning the alleged fraudulent transfer of family funds.

29. As far as the orders made on 27 March 2025 restraining the respondents from making any changes to the Board of Directors or shareholding of the 4th respondent are concerned, it is contended that the orders were obtained by misleading this Honourable court and the petitioner failing to disclose that the meetings of the company were intended to formally approve the transmission of the late Esmail's shares to his beneficiary and to appoint the interested party as a director for business continuity purposes since both the interested party's father and the 1st respondent are elderly and not able to effectively manage the constraints of the company's day to day operations which include liaising with all relevant stakeholders including customers, suppliers, bankers.

30. The meetings that took place on 27 March 2025 did not alter the petitioner's shareholding or director status in the 4th Respondent and the petitioner has not provided any evidence to demonstrate how he has been oppressed by the meetings of the company. The *ex parte* orders, according to the interested party, are blatant attempts by the

petitioner to disrupt the operations and affairs of the 4th respondent. In any event, since the 1st and 2nd respondents already have the majority shareholding in the company, the petitioner cannot argue that the inclusion of the 4th respondent will tilt the majority rights to his prejudice.

31. As far as the position of the company secretary is concerned, the interested party has sworn that the 4th respondent has operated without a company secretary for a long time and that it is not unlawful for a company secretary to be appointed.

32. Having considered the applications before court, I am convinced that the issues in each of these applications are intricately linked and, inevitably, a determination of one may as well decide the fate of the other or others. Bearing this in mind, the application that calls for my immediate attention is the petitioner's application dated 26 March 2025.

33. The 1st and 2nd respondents filed replying affidavits opposing the application. In their affidavits, the respondents have adopted a common stance and which is also the stance adopted by the interested party. In particular, they have stated that the petitioner is their brother together with Esmail (deceased). Each of the four brothers held 25% shares in the 4th respondent company. The 3rd respondent was the company secretary of the company but that he "*resigned and retired*"

in 2017. However, changes have not been effected because until recently, the company was not linked to the Business Registration Services portal. This delay in linking the company to the BRS has been attributed to the petitioner who is alleged to have registered a business name similar to that of the 4th respondent.

34. Each one of the four brothers own an equal shares in several properties including one property where the 4th Respondent's factory is housed and another property where the Applicant has his residence on the 1st floor and which has always housed the 4th respondent's raw materials on the ground floor.

35. In 2008, the interested party joined the company as the company manager at the instance and with the consent of all the directors. Business decisions in respect of the company operations were and have always been taken informally since all the shareholders and directors are brothers. But things took a turn for the worse sometime in 2018 after Esmail passed on and when the petitioner discovered that Esmail had left all his shares in the 4th Respondent and all his other assets to the interested party. Apparently, just like the 1st respondent, Esmail did not have any children of his own.

36. After the 4th respondent joined the company, he brought fresh ideas and contributed not only to the company's production capacity, but he is also said to have championed product diversification with the

introduction of several new products. He also adopted a change in marketing strategies which included dynamic product packaging which has kept the company and business relevant and its products competitive in the market.

37. It is alleged that the petitioner transferred Kes. 32,245,264.32 and Kes. 4,490,161 on 16 January 2021 and 31 January 2019 respectively out of a joint account. The petitioner could not account for the money and after this incident, the applicant completely disengaged himself from the operations and affairs of the Company and has instead resorted to compromising the operations of the company by several actions which he has taken including the locking up of the storage space which the company historically utilised for several decades in the ground floor of the property that is jointly owned by the brothers but which the Petitioner has sole and exclusive control of.

38. The petitioner's actions and omissions are said to have hindered, paralyzed, and sabotaged the smooth running of the affairs and operations of the Company. As a result, they have caused the Company to incur losses in addition to non-compliance with regulatory requirements. The cumulative effect of these actions has been devastating to the Company's stability and future prospects.

39. As far as the meetings of 27 March 2025 are concerned, they took place as scheduled. The Petitioner did not attend the meetings and did

not send any apologies or present any written opposition to the agenda items that were circulated. The purpose of the Board of Directors Meeting and the Extra Ordinary General Meeting scheduled for 27 March, 2025 was aimed at regularising the affairs of the Company as a result of the demise of Esmail, and in order to discuss appointing of the interested party as a director of the Company for succession planning and to ensure that the Company's operations are not disrupted.

40. The 1st and 2nd respondents have sworn that that they are both of advanced age and are not able to actively run the company. Their intention is “*to pass on the baton*” which, according to them, the petitioner wants to prevent at all costs yet he has deserted the Company and embezzled more than Kshs. 30 million from their joint account.

41. The 1st and 2nd respondents have reiterated that the Extra Ordinary General Meeting scheduled for 27 March, 2025 was aimed at formally appointing the interested party as a director of the Company and ensuring Esmail's name is removed from the register as a director of the Company whilst the Board of Directors meeting held on the same day endorsed the formal transmission of shares from the Estate of brother to his beneficiary Mohamed and also endorsed the appointment of the new company secretaries Liroja Services as the

Company's Secretary in order to comply with the Companies Act which, among other things, requires the 4th Respondent to have a company secretary. The meetings did not discuss the petitioner's shareholding or his directorship in the company.

42. The respondents have denied having been served with any court order on 27 March 2025. Prior to the said date, the Petitioner did not communicate any reservations to 1st respondent about the meetings that had been scheduled. And even when the petitioner's counsel appeared in court on 24 March 2025, he attempted to bring to the court's notice the issue of the impending meetings but since he was making statements from the bar, the court informed him that it would not be able to issue any interim orders on oral applications. The petitioner then decided to wait until the eleventh hour to make the application on 26 March 2025 instead of making the application at the earliest opportunity immediately after 3 March 2025 when he was first served with the notices or even on 10 March 2025 when he received printed copies of the notices by DHL.

43. The 1st and 2nd respondents have urged the court not to grant the orders sought in the application since they are not only not merited but also because the application is actuated by malice and bad faith.

44. I have considered the parties' submissions on the legal positions they have adopted in support of or in opposition to the applications before

court. There is no doubt that the petitioner's application is primarily seeking the orders of injunction.

45. The principles upon which an injunction pending the hearing and determination of a suit may be granted were set out in **Giella V. Cassman Brown & Co. Ltd [1973] EA 358**. The Court of Appeal revisited these principles in **Nguruman Limited v Jan Bonde Nielsen & 2 others (2014) eKLR**. At the very beginning of its judgment, the Court of Appeal summarised the case before them in the following terms:

“The sole issue raised in this interlocutory appeal is whether the learned Judge of the High Court (Odunga, J.) in granting the 1st respondent’s prayer to restrain the appellant by an order of temporary injunction properly exercised his discretion or whether he misdirected himself in some matter and arrived at a wrong decision. Put differently, this court is being asked to determine whether the 1st respondent presented a prima facie case with a probability of success before the High Court; whether irreparable injury would result if the injunction was not granted and whether there was evidence that the balance of convenience was in favour of the 1st respondent. See Giella V. Cassman Brown [1973] EA 358.”

46. In disposing of the appeal, the court, in a way, restated the principles in *Giella versus Cassman Brown (supra)* and held:

“Since those principles are already codified by authoritative pronouncements in the precedents they may be conveniently noted in brief as follows:

“In an interlocutory injunction application, the applicant has to satisfy the triple requirements to;

(a) establish his case only at a prima facie level,

(b) demonstrate irreparable injury if a temporary injunction is not granted, and

(c) ally any doubts as to (b) by showing that the balance of convenience is in his favour. These are the three pillars on which rests 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. See Kenya Commercial Finance Co. Ltd V. Afraha Education Society [2001] Vol. 1 EA 86”.

47. The court explained that if an applicant for an injunction establishes a *prima facie* case, that, in itself, is not enough for the court to grant an interlocutory injunction. Besides establishing a *prima facie* case, the court must go further and satisfy itself that if the injunction is

declined, the injury the applicant for injunction will suffer, will be irreparable. And by this it is meant that if damages recoverable in law is an adequate remedy and that, in any event, the respondent is disposed to pay those damages, no interlocutory order of injunction should be granted, irrespective of how weighty the applicant's claim may appear to be.

48. According to the learned judges of Appeal, if a *prima facie* case is not established, then the conditions of irreparable injury and balance of convenience need not be considered. In judges' words "*the existence of a prima facie case does not permit "leap-frogging" by the applicant to injunction directly without crossing the other hurdles in between*".

49. And as to what a *prima facie* case entails, the Court adopted the definition given to this phrase in **Mrao Ltd. V. First American Bank of Kenya Ltd & 2 others [2003] KLR 125**. The Court of Appeal defined the phrase in the following terms:

"In civil cases, a prima facie case is a case in 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 to call for an explanation or rebuttal from the latter. A prima facie case is more than an arguable case. It is not sufficient to raise issues but the evidence

must show an infringement of a right, and the probability of success of the applicant's case upon trial. That is clearly a standard, which is higher than an arguable case.”

50. The learned judges of appeal explained this to mean that the party on whom the burden of proving a *prima facie* case lies must show a clear and unmistakable right to be protected. This right must be directly threatened by an act sought to be restrained; the invasion of the right has to be material and substantive; and, there must be an urgent necessity to prevent the irreparable damage that may result from the invasion.

51. The court reiterated that in considering whether or not a *prima facie* case has been established, the court does not hold a mini trial and it must not examine the merits of the case closely. All that the court is to consider is that, on the face of it, the person applying for an injunction has a right which has been or is threatened with violation. The position of the parties is not to be proved in such a manner as to give a final decision on disputed facts. In particular, an applicant need not establish title but it is enough if he can demonstrate that he has a fair and bona fide question to raise as to the existence of the right which he alleges.

52. The court further explained that, the standard of proof of that *prima facie* case is on a balance or, as otherwise put, on a preponderance of probabilities. This means no more than that the Court takes the view that on the face of it, the applicant's case is more likely than not to ultimately succeed.

53. As to the condition of irreparable damage, the court held that it is a threshold requirement and the burden is on the applicant to demonstrate, *prima facie*, the nature and extent of the injury. The court noted further:

“Speculative injury will not do; there must be more than an unfounded fear or apprehension on the part of the applicant. The equitable remedy of temporary injunction is issued solely to prevent grave and irreparable injury; that is injury that is actual, substantial and demonstrable; injury that cannot “adequately” be compensated by an award of damages. An injury is irreparable where there is no standard by which their amount can be measured with reasonable accuracy or the injury or harm is such a nature that monetary compensation, of whatever amount, will never be adequate remedy.”

54. On the question of balance of convenience, the court held that:

“It is where there is doubt as to the adequacy of the respective remedies in damages available to either party or both that the question of balance of convenience would arise. The inconvenience to the applicant if interlocutory injunction is refused would be balanced and compared with that of the respondent, if it is granted.”

55.If I may digress, where the court harbours doubt and has to resort to balance of convenience to determine whether or not to grant an injunction, is the “*doubt*” on whether a *prima facie* case exists or is it on whether damages are an adequate remedy? In **Thathy v Middle East Bank (K) Ltd & another [2002] KEHC 1159 (KLR)**, a case in which, as then an advocate of this Honourable Court, I represented the applicant, Ringera, J. (as he then was) held the view that the doubt is attributed to whether a *prima facie* case exists and not to whether damages are an adequate remedy as the learned judges held in **Nguruman Limited v Jan Bonde Nielsen & 2 others (2014) eKLR**. In the Thathy case, the learned judge held as follows:

“I have now to weigh the above submissions in the light of the settled principles for the grant of interlocutory injunctive relief. Those principles are as follows. First, the applicant must show a prima facie case with a probability of success at the trial. If the

court is in doubt about the existence or otherwise of a prima facie case it should decide the application on a balance of convenience. Secondly, a court will not normally grant an interlocutory injunction unless it can be shown that the applicant is likely to suffer an injury which cannot adequately be compensated in damages: see Giella v Cassman Brown & Co Ltd [1973] EA 358. (Emphasis added).

56. Besides the conditions of *prima facie case* and that of irreparable damage, the learned judge also added another angle to the conditions that an applicant must meet before an order for injunction can be made in his favour. The learned judge held:

Those two (i.e. the condition for prima facie case and irreparable damage) are, if I may so say, the necessary but not the sufficient conditions for grant of interlocutory injunctive relief. Of equal importance is this: an injunction is an equitable remedy and the court may decline to grant the same if it is shown that the applicant's conduct pertinent to the subject matter of the suit does not meet the approval of a court of equity."

57. It is against this legal background that the petitioner's application has to be considered. Of course, this being an interlocutory application,

this Honourable Court is enjoined not to make conclusive remarks on contentious issues of fact at this stage of the trial.

58. A date stamp on the petitioner's petition shows that the petition dated 15 January 2025 was filed in court on 16 January 2025. In the petition the petitioner has specifically prayed for the orders, thus:

1. That the Petitioner be granted access to financial and other records of the Kenya Adhesive Products and be provided with copies of any and all documents in regards thereto;

2. That this Honourable Court be pleased to order an investigation into the affairs of Kenya Adhesive Products Limited and to appoint two (2) competent inspectors to do the investigations and report to court within a period to be specified.

2. That the 4th Respondent do hold a General Meeting to discuss company affairs and pass any requisite and necessary resolutions upon submission of the inspection report.

59. Subsequent to the petition, the respondents called for two meetings that were set to be held on the same date, more particularly on 27

March 2027. The notices of the meetings which the petitioner says were sent on 3 March 2025 read as follows:

“NOTICE IS HEREBY GIVEN that the Extraordinary General Meeting of the Company will be held at the

AGENDA:

1.To table proxies and note the presence of a quorum;

2.To read the notice convening the meeting;

3.Changes in the directors of the company

a) To note the cessation as a Director of Esmail Abdulkarim Ebrahimjee on his demise;

b) To appoint Mohammed Najmumuddin as a director

4.To discuss any other ordinary business of the company for which adequate notice has been given.

A member entitled to attend and vote may appoint a proxy to attend and vote on their behalf. A proxy need not be a member of the company.

By order of the board.

Signed

Liroja Services-Secretary

Incoming Company Secretaries

Liroja Services

3rd March 2025”

60. The notice for the meeting of the Board of Directors was couched as follows:

Notice is hereby given that the meeting of the Board of Directors of Kenya Adhesive Products Limited will be held on Thursday, 27th March 2025 immediately after the Extraordinary General Meeting to be held at 10.00AM. The Agenda for the meeting is appended below:

Agenda:

- 1. Appointment of the Chairman of the Board***
- 2. Welcome, apologies and quorum***
- 3. Adoption of the Agenda and Declarations of Conflicts of Interests. if anv:***
- 4. Appointments of Company Secretaries***
- 5. Change of Shareholder Particulars;***
- 6. Transmission of Shares***
- 7. change in Bank Signatories***

8. Authority to update the statutory registers of the company

9. Any other business

By the order of the board

Signed

Lirova Services-Secretary

Incoming Company Secretaries

Liroja Services

3rd March 2025

61. One intriguing thing about these two notices is that they were authored and signed by the same company secretary who was supposed to be appointed in the same meetings that he was calling for. In other words, the company secretary issued the notices before he was duly appointed in that capacity. This raises the question whether the two meetings were properly convened. If, after the petition has been heard, it turns out that the meetings may not have been properly convened, the question whether anything done in those meetings concerning the affairs of the 4th respondent is valid would, in my humble view, be a legitimate question.

62. I also note that the respondents and the interested party admit that the 4th respondent has not held any meeting for a long time. According to the 1st respondent:

“8. Business decisions in respect of the company operations were and have historically been taken informally since all the shareholders and directors are brothers.”

63. The 2nd respondent has affirmed this to be the position in paragraph 5 of his affidavit, he has sworn, *inter alia*, that:

“Business decisions and all other decisions have always been taken informally between us brothers after informal discussions. We have always operated the business based on implicit trust in each other.”

64. It is not surprising, therefore, that the two meetings were called at the backdrop of the instant petition in which the petitioner has claimed, among other things, that the 1st and 2nd respondents have either failed to give the petitioner any notices for board meetings, annual general meetings or special general meetings of the company or have deliberately excluded him from the meetings altogether. For the petitioner’s information, if the affidavits of the 1st and 2nd respondents are anything to go by, there have been no such meetings for which

notices could possibly have been issued or from which the petitioner could have been excluded.

65. On this score, I am satisfied that the petitioner has demonstrated that he has a *prima facie* case with a probability of success.

66. I note that in his prayers in the petition, the petitioner has not questioned the transfer of shares of Esmail Abdulkarim Ebraihmjee (deceased) to the interested party. Of course, the petitioner would not have any basis to stop the transfer of the deceased's shares in the wake of the certificate of confirmation of grant dated 22 January 2013 according to which the interested party inherited the deceased's shares in the 4th respondent. As matter of law, the interested party's entitlement to the deceased's shares arises, not from the resolutions of the meetings of the company held on 27 March 2025 but from the authority of the court as expressed in the certificate of confirmation of grant. Thus, with or without the meetings of 27 March 2025, whose validity, as noted, has been questioned, the interested party would still be entitled to the transfer for the deceased's shares in the 4th respondent company.

67. But it is important to remember that a shareholder is not necessarily a director of a company. In that regard, I suppose the appointment of the 4th respondent as director of the company would be subject to the provisions of the constitution or the articles of association of the 4th

respondent. Regrettably none of the parties exhibited these articles to any of their affidavits, if not for anything else, to shed light on the manner of appointment of a director or directors of the 4th respondent.

68. Having surmounted the first hurdle, the second question is whether, in the event the court declines to grant the order for injunction, the petitioner will suffer such irreparable loss that damages would be an adequate remedy.

69. The nature of the damage that the petitioner is likely to suffer if the injunction sought is not granted has been deposed to in paragraph 10 of the affidavit of the petitioner in the following terms:

“10. That I am apprehensive that the Respondents unlawful actions would have adverse ramifications on me as a director and shareholder of the 4th Respondent company because the 1st and 2nd Respondents will gain an unfair advantage in the general meetings as well as the Board of Directors thereby giving them the impetus to continue with their oppressive conduct against me as a minority shareholder in the company.”

70. Each of the three surviving directors of the 4th respondent has 1250 shares and, therefore, needless to say, none of the directors is a majority shareholder. No doubt, the three directors are entitled to take such decisions as are appropriate for the benefit of the company and if,

in their exercise of this task, the petitioner's vote falls in the minority, hard luck. If it is the petitioner's view that the decision taken by the majority is not in the best interest of the company, he is entitled set in motion the available legal means of challenging such a decision. The mere fact that a petitioner feels that he is in the minority does not elevate him to the status of an applicant who is likely to suffer irreparable damage if, in the instant circumstances, an injunction is not granted.

71. The Court of Appeal in **Nguruman Limited v Jan Bonde Nielsen & 2 others (supra)** was emphatic that speculative injury is not sufficient and that there must be something more than an unfounded fear or apprehension on the part of the applicant. The court further noted that the injury must be actual, substantial and demonstrable and that, "... *An injury is irreparable where there is no standard by which their amount can be measured with reasonable accuracy or the injury or harm is such a nature that monetary compensation, of whatever amount, will never be adequate remedy.*"

72. I am not satisfied that the petitioner's apprehension of being in the minority in running the affairs of the company fits the threshold of an irreparable harm. As long as the decisions of the company are *intra vires* the memorandum and articles of association of the company and in best interest of the company, it may not matter that the petitioner

finds himself on the minority side. He cannot thereby claim that he is likely to suffer any loss, let alone irreparable loss that cannot be adequately compensated by way of damages.

73. For the reasons I have given, I would dismiss the petitioner's application for injunction. Having so held, there are no orders to be set aside and thus, the remainder of the interested party's application is allowed only to the extent that the petitioner's application is dismissed.

74. As far as the 3rd respondent's application is concerned, all I can say that it is based on contentious facts the determination of which has to await the full hearing of the petition. I say so because although the 3rd respondent has sworn in the affidavit in support of his application that he resigned from his position as the 4th respondent's company secretary, an extract of the records of the 4th respondent from the companies registry dated 8 April 2023, a copy of which has been exhibited to the petitioner's affidavit sworn on 3 June 2025, shows that as at 8 April 2025, the 3rd respondent was the secretary of the 4th respondent.

75. One of the items in the agenda of the meetings of 27 March 2025 was the appointment of a new secretary. This begs the question of who the company secretary of the company was up to that point or whether the

company had been operating without a company secretary. These questions cannot be answered at this stage of the proceedings.

76. For the foregoing reasons and except for the interested party's application to set aside the orders *ex parte* orders, the rest of the applications are hereby dismissed. Costs will be in the cause.

Orders accordingly.

Signed, dated and delivered on 17 November 2025

Ngaah Jairus
JUDGE