

THE REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
COMMERCIAL AND TAX DIVISION
CIVIL SUIT NO. E980 OF 2021

HON. JUSTICE ALEEM VISRAM
2ND DECEMBER, 2025

BETWEEN

GIHOMES MANAGEMENT LIMITED.....PLAINTIFF/APPLICANT

VERSUS

IAN REBELLO.....1ST DEFENDANT/RESPONDENT

BOSCO DOURADO.....2ND DEFENDANT/RESPONDENT

PETER BRAGANZA.....3RD DEFENDANT/RESPONDENT

CHERYL DE SOUZA4TH DEFENDANT/RESPONDENT

MOLLY WAMBUI.....5TH DEFENDANT/RESPONDENT

TONY GOMES.....6TH DEFENDANT/RESPONDENT

RULING

1. The Court is invited to determine the 1st, 5th and 6th Defendants' Preliminary Objection dated 24th February, 2025. The Defendants contend that the suit is incompetent because, first, the individuals said to be behind the filing of the suit allegedly lack locus standi, and second, the suit ought to have been commenced as a derivative action under Sections 238 and 239 of the Companies Act, 2015 without leave of the Court.

2. The Plaintiff opposes the objection. It argues that the objection is not founded on a pure point of law and is therefore incompetent. It maintains that it is a limited liability company with legal capacity to sue in its own name, and that its Board of Directors duly passed resolutions authorising commencement and continuation of the proceedings. The Plaintiff further submits that this is not a derivative action and that no shareholder is purporting to litigate on behalf of the company.

Whether the Preliminary Objection Raises a Pure Point of Law

3. The starting point remains the established test in *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd (1969) EA 696*, where the court held that a Preliminary Objection must raise a pure point of law argued on the assumption that all pleaded facts are correct, and cannot be sustained where facts require proof. The Supreme Court reaffirmed this position in *Joho & Another v Shahbal & 2 Others [2014] KESC 34 (KLR)*, emphasizing that an objection must not call for interrogation of contested facts.

4. In this instance, the Defendants invite the Court to determine whether the Plaintiff's Board was "ousted", whether certain individuals improperly filed the suit, and whether the suit was filed "against the will" of the company. These matters require examination of company records, resolutions, minutes,

and filings at the Companies Registry. The legitimacy of rival boards, or competing versions of corporate control, cannot be resolved through a preliminary objection.

5. The High Court has consistently rejected preliminary objections that require factual verification. In *Kamau v Waweru [2024] KEHC 7281 (KLR)*, the court held that where factual disputes arise, the objection is defective. Similarly, in *Grewal & 3 Others v Grewal & 2 Others [2025] KEHC 3929 (KLR)*, this Court declined to entertain an objection that required an inquiry into contested factual matters. The reasoning applies squarely to the circumstances before this Court.
6. I am therefore satisfied that the objection, as framed, is not confined to a pure point of law. It invites the Court into factual controversy which must be resolved through evidence.

Whether the Suit is a Derivative Action

7. The Defendants argue that the suit challenges directorship, corporate governance, and alleged misconduct in relation to company affairs. They therefore contend that the Plaintiff should have filed a derivative claim in accordance with Sections 238 and 239 of the Companies Act.

8. A derivative claim, by statutory definition, is brought by a member in respect of a cause of action vested in the company and seeking relief on behalf of the company. That position was explained in *Ghelani Metals Ltd & 3 Others v Elesh Ghelani Natwarlal & Another* [2017] eKLR, and more recently, in *Isaac Kinyanjui Muitherero v Jonathan Craig Buffey & 2 Others* [2020] eKLR and *Michael Kibet Kebenei v African Grain Care Equipment Ltd & 2 Others* [2022] eKLR.

9. However, the suit before this Court is brought not by a shareholder, nor by a director purporting to represent the company in a personal capacity, but by the company itself. The plaint describes the Plaintiff as a limited liability company. The reliefs are sought by the company in its own name. There is no pleading in which an individual seeks to litigate derivatively.

10. It is trite that a company, being a legal person, is entitled to sue in its own name: *Salomon v Salomon & Co. Ltd* [1897] AC 22. When a company sues in its own name, the question of derivative procedure does not arise. The authorities relied upon by the Defendants are distinguishable because they were all suits initiated by individuals in their personal names.

11. The evidence presently before the Court includes:-

- (i) a written authority to file suit dated 22nd December, 2021, filed with the Plaintiff;

(ii) minutes of the Board meeting of 3rd October, 2021, filed on 2nd February, 2022; and

(iii) a further Board Resolution dated 15th April, 2025, confirming the suit.

12. The law does not require that such resolutions accompany the plaint. In *Autoports Nairobi Freight Terminal Ltd & Another v Cabinet Secretary, Ministry of Roads & Transport & 4 Others [2024] KEHC 2362 (KLR)*, Mabeya J held that a corporate resolution may be produced at any time before hearing. A similar view was adopted by Odunga J in *Leo Investment Ltd v Trident Insurance Co Ltd [2014] eKLR*, and the Court of Appeal affirmed this approach in *East African Safari Air Ltd v Anthony Ambaka Kegode & Another [2011] KECA 160 (KLR)*.

13. The Defendants have not challenged the authenticity of the resolutions themselves. Their objection targets the underlying corporate governance dispute, including the alleged “ouster” of certain directors. That dispute however remains contested and must be resolved through evidence, not through a Preliminary Objection.

14. Having reviewed the pleadings and the applicable law, I find that based on the evidence presently before this Court, at this stage of proceedings, and without prejudice to any final findings that may be arrived at after viva voce evidence has been submitted, the suit is properly commenced by a legal person with

capacity to sue, and is not a derivative claim requiring leave under Sections 238–239 of the Companies Act.

Disposition

15. Based on the reason set out above, I find and hold that the Preliminary Objection dated 24th February, 2025, is without merit. The same is dismissed with costs to the Plaintiff.

16. The matter shall proceed to case management.

Dated and delivered virtually via Microsoft Teams this 2nd day of December, 2025

ALEEM VISRAM, FCI Arb

JUDGE

In the presence of;

Court Assistant: Lispa

.....for Plaintiff/Applicant
.....for 1st Defendant/Respondent
.....for 2nd Defendant/Respondent
.....for 3rd Defendant/Respondent
.....for 4th Defendant/Respondent
.....for 5th Defendant/Respondent
.....for 6th Defendant/Respondent