

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI
COMMERCIAL & TAX DIVISION
MILIMANI LAW COURTS
MISC E582 OF 2025
[Coram: Gikonyo]]

**PARVIR PROPERTIES
LIMITED.....APPLICANT**

VERSUS

**BANK OF BARODA (KENYA)
LIMITED.....RESPONDENT**

VIMAL JAYANTILAL

**SHAH.....INTENDED
INTERESTED PARTY**

RULING

Joinder of Intended Interested Party

1. The issue before the court is whether the intended interested party should be joined in this cause.

Background

2. The applicant filed an application dated 8.4.2025 seeking an order compelling the respondent bank to grant it unhindered access to funds held in its account.

3. The applicant's gravamen is that it was unjustly held to be in contempt of court despite having complied with court orders.
4. The plaintiff company was incorporated following an agreement by the beneficiaries of the **Estate of the late Parvatiben Virji Shah** to transfer the assets thereto with the beneficiaries having equal shareholding and directorship.
5. There was an application filed in 2007 by the administrator of the **Estate of the Late Jayantilal Virji Shah** seeking revocation of the grant. The application was settled through a consent dated 21.7.2008. The consent was like the earlier agreement that assets would be transferred to the plaintiff with each beneficiary being an equal shareholder/director.

6. It was a term of that consent that **Land Reference Number 209/99/24** was to be sold and proceeds applied to settle the loan with **Bank of Baroda (K) Limited**, pay the contractors employed for the development of the land and proceeds deposited in the four advocates account in trust for the company.
7. Following the orders of 2.11.2009, the applicant upon settling the intended expenses transferred Kshs. 16,000,000/- from the company's account to the advocates account on 12.11.2009.
8. The applicant contends that the rectification of the grant on 22.5.2013 to include the terms of the consent of 21.8.2008 and directions that the money was to be transferred to the applicant for distribution to the beneficiaries was obtained illegally.

9. The applicant also contends that the rectification of grant was cancelled by dint of the orders given on 30.1.2015 and the court ordered the applicant to refund all the funds withdrawn from two accounts.

10. The applicant asserted that there was an error on the face of the record as the court was misled to believe contrary to the relevant facts and evidence in court that: -

(1) the applicant was still the executor of the estate even though the estate assets were distributed and the estate dissolved in 2001.

(2) The applicant was liable for the withdrawal of money from the advocates' account.

(3) The applicant was a signatory of the advocates account despite there being clear evidence that the withdrawal was by the advocates who were signatories to the account.

(4) The applicant had no access to the advocates' account.

(5) The amount withdrawn was on behalf of the applicant or to his benefit.

(6) The applicant was in contempt of court and had failed to restore the withdrawn funds from the two accounts.

11. From this context, the applicant argues that the freezing order emanating from the consent order 7, 8 and 9 of 21.7.2008 providing that there shall be no withdrawals from the account until the final settlement of the estate account have been overtaken by events following the transfer of the Estate's assets to the company.

12. The applicant also argues that due to the freezing order, it is unable to pay statutory debts including monthly rental income taxes to the Kenya Revenue Authority.

Intended Interested Party's Application

13. The intended interested party filed the notice of motion dated 15.5.2025 seeking:

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(1) leave to join this cause as an interested party.

(2) leave of 14 days to file its respective responses.

14. The application is supported by an affidavit sworn by the intended interested party on 15.5.2025.

15. The grounds are: -

(1) The intended interested party is the personal representative to the estate of **Jayantilal Virji Shah**, a beneficiary of the estate of late **Parvatiben Virji Shah**.

(2) The intended interested party has a reasonable stake in the matter and will provide clarity to the court regarding the issues at play.

- (3) **Pradeep Virji Shah** was held in contempt of court on 4.8.2023 for failing to return Kshs. 20,412,537.20 which was withdrawn in cash.
- (4) He was fined and has not purged contempt to date.
- (5) Contrary to the consent order of 23.7.2008, **Pradeep** has been carrying on the company's operations in total seclusion of all the beneficiaries.
- (6) Some of the beneficiaries are holding greater number of shares.
- (7) Some beneficiaries have not been allocated any shareholding and directorship on the official register contrary to the court order.
- (8) **Pradeep Virji Shah** being the surviving sole executor sold **L. R. No. 209/99/24** for over Kshs. 90 million but has not provided an account of how the money was utilized.

Response

16. The plaintiff/ respondent opposed the application through a replying affidavit sworn on 1.9.2025 by **Pradip Gosrani**.

17. The respondent argued that the applicant does not qualify to be enjoined as an interested party in this matter. It fronted two reasons.

18. First, that the applicant cannot be joined as a beneficiary of the estate as succession proceedings have been concluded and file was closed. Secondly, that he cannot be joined as a director/shareholder of the plaintiff company since the company is competent to represent and prosecute the case against the respondent bank on its own and the shareholder/directors have no capacity to be enjoined as a party in this suit.

Analysis and determination of joinder application

Transfer of estate property to a company: the dilemmas

19. The plaintiff was incorporated on 17.12.2002 by the executrix on behalf of the beneficiaries of the Estate of the late **Parvatiben Virji Shah** as a holding company in respect of the Estate's Assets. The intended interested party is an administrator in the estate of **Estate of the Late Jayantilal Virji Shah**, a beneficiary to the aforementioned Estate.
20. From the material before the court, the beneficiaries of the estate of the **late Parvatiben Virji Shah** entered into a consent dated 21.7.2008 recorded on 23.7.2008 to the effect that all beneficiaries of the Estate immediately

become equal shareholders and directors of the company.

21. The plaintiff claimed that the succession proceedings have been concluded and file was closed, and that for this reason the intended interested party should not be joined in the cause.

22. However, the intended interested party asserted that his joinder is necessary as he will provide clarity to the issues before the court. He also claimed that Pradeep was held in contempt of court orders given in the succession matter. He further claimed that the only surviving executrix of the Estate, **Pradeep** sold **L. R. No. 209/99/24** for over Kshs. 90 million but has not provided an account of how the money was utilized, that he has been carrying on the company's operations in total seclusion of all the beneficiaries, that some of the beneficiaries are holding

greater number of shares, that some beneficiaries have not been allocated any shareholding and directorship on the official register contrary to the court order.

23. The law is that, upon incorporation, the company becomes a legal person with separate legal personality from its shareholders and directors. **Salomon v Salomon**

24. The company is the proper entity to sue for a wrong committed against it. **Foss v Harbottle [1843] 2 Hare 461** However, the exceptions to the rule include:

a) a derivative claim by a member of a company brought: -

(i) in respect of a cause of action vested in the company; and

(ii) seeking relief on behalf of the company, which must be commenced or continued with leave of the court. **S.238**

and 239 of the Companies Act.

25. Or b) a proceeding for protection of members against oppressive conduct or unfair prejudice brought under the Companies Act or Part XXIX thereof.

**Directline Assurance Company Limited
v Macharia & 11 others (Commercial
Case E328 of 2024)
[2025] KEHC 284 (KLR) (Commercial
and Tax) (22 January 2025) (Ruling)**

26. The joinder application is neither a derivative suit nor strictly a proceeding for protection of members brought under the Companies Act or Part XXIX.

27. Besides a derivative action or proceeding for protection, ordinarily, the shareholders are provided with tools and mechanisms through which they pursue resolutions and decisions on, among other things, appointment and removal of directors, which also influence decision-making and running of the company. The tools set out

in the companies Act and the company's instruments-constitution, memo and articles of association or shareholders' agreement. And some of the effective mechanisms include; AGM or special general meetings convened by the company or by the shareholders as provided in the Companies Act.

28. However, this matter is an example of the dilemmas that are associated with appropriating the intestate estate property to a private limited liability company in succession law.

29. These dilemmas were foreseen in earlier court decisions. In **re Estate of Susan Mwelu Mutia (Deceased)** [2025] KEHC 2202 (KLR) the court stated that: -

“30. Unless it is specifically provided in a will, appropriating the property of the estate of the deceased to a company-

registered or not-is problematic in the succession law for a number of reasons.

31. Some of the reasons include; first, the probate court distributes the estate to the dependants or beneficiaries of the estate of the deceased. Second, the concept of corporate personality of a company (Salomon vs. Salomon) is not consistent with individual and personal ownership of property bequeathed by will or distributed by the court to the beneficiaries; the property of the company belongs to the company.”

30. In this matter, the intended interested party has claimed that the sole executrix has acted oppressively towards other beneficiaries who are either shareholders or entitled to be shareholders of the plaintiff company as highlighted under paragraph 22.

31. Although this application has not been strictly brought under the Companies Act, it raises issues akin to seeking protection against oppressive conduct or unfair prejudice to some members of the

company being orchestrated by one of the directors of the company. It may however not offer a complete protection or remedy unless, subject to the procedural requirements, the applicant avails himself of the remedy under the Companies Act as a shareholder and director.

32. Nonetheless, the special circumstances of this case, are that the assets transferred to the company were estate property and the applicant as a personal representative of the estate of a deceased shareholder and director of the company. this mix of things, justifies the joinder of the intended interested party as necessary to assist in complete and effectual address of the issues arising from the applicant's relationship with the respondent bank.

33. From this viewpoint, joinder of the intended interested party will assist the court to avoid multiple suits, ensure all

relevant issues are canvassed before the court, and avoid the risk of issuing orders that may be prejudicial to beneficiaries of the subject Estate.

Conclusion

34. In the upshot, the court is satisfied that the intended interested party has sufficient interest in the subject matter of the proceedings and that his participation is necessary for the complete adjudication of the issues in controversy.

35. The application dated 15.5.2025 is allowed in the following terms: -

- (1) I order that the interested party is and is hereby joined in the proceedings.
- (2) Interested party is granted leave of 14 days to file his response to the applicant's application.
- (3) Costs in the cause.

**Dated, signed and delivered at Nairobi
through Microsoft teams online
application this 4th day of December,
2025**

F. Gikonyo M

Judge

In the presence of: -

Ogado for Plaintiff

**Kibet for Gakuya for intended Interested
Party**

Kilonji for defendant

CA Kinyua