

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
HCCOMM NO. E007 OF 2024

MARTIN OMUKUBA OLUBAKAYA
PETITIONER

VERSUS

JUDITH NANDACHA SIMIYU.....1ST
RESPONDENT

STOP N/ PLAY CRE'CHE SERVICES LIMITED.2ND
RESPONDENT

RULING

1. Before this Court for determination is a Notice of Motion dated 6th March 2025, seeking;
 - a. Spent
 - b. Spent
 - c. The Honourable court be pleased to issue an order that a reputable audit firm be appointed to conduct an independent business review of the 2nd Respondent from January 2017 to date and to prepare a report thereof and to also prepare a valuation of the 2nd Respondent's shares.
 - d. The Honourable court be pleased to issue an injunction restraining the 1st Respondent whether by herself, her agents and or servants or any other persons acting

under her authority and or instructions from diverting, withdrawing or utilizing any monies generated from the business and assets of the 2nd Respondent.

- e. Spent
 - f. Spent
 - g. The Honourable court be pleased to issue an order impounding all that Motor Vehicles Registration Numbers KCN 456U, KCM 743L, KCS 664W and KCG 020C belonging to Stop and Play Cre'che Services Limited at the 2nd Respondent's costs to stop the continued fraud by the 1st Respondent pending the hearing and determination of the suit.
 - h. The Honourable court be pleased to issue a mandatory injunction to prevent the 1st Respondent herein from using th company assets to generate income for her company MAFRAJ STOP N PLAY CRIBS LIMITED.
 - i. Costs of this Application be provided for.
2. The grounds for the Applicant's application, as deponed by the Petitioner, are that he is one of the directors of the 2nd Respondent, and that the 1st Respondent was married to him until 16th December 2024, when they divorced. He averred that during the pendency of their marriage, the 2nd Respondent was incorporated on 18th December 2017, with 1,000 ordinary shares, each valued at Kshs.100/=, giving a nominal share capital of Kshs.100,000/=. He further averred that he and the 1st Respondent each hold 500 ordinary shares, representing equal shareholding. He stated

that the objective of the 2nd Respondent is to conduct a day care business and provide transport services to children from various schools. After the incorporation of the company, he purchased five (5) motor vehicles registration numbers KCN 456U, KCM 743L, KCS 664W, KCG 020C, and KCQ 559Z from the sale of some of his properties and bank loans, and registered the vehicles in the name of the company to facilitate business operations. He avers that his total capital contribution to the company, including the purchase of the motor vehicles and other expenses, amounts to approximately Kshs.9,570,223/=.

3. He further avers that the 1st Respondent did not contribute to the company. He states that she has been managing the company's affairs due to the nature of his work, and that since the irretrievable breakdown of their marriage, the 1st Respondent has sidelined him from company operations, allegedly diverting all income for her personal benefit, which has negatively impacted the smooth management of the company. He contends that he has been denied access to company information and records despite multiple requests, and has annexed an email evidencing his requests. He further avers that the 1st Respondent has opened multiple bank accounts which she operates in concealment, raising concerns that this may expose him to future claims or actions. On 16th December 2023, he alleges that the 1st Respondent sold one of the company's vehicles, registration number KCQ 559Z, to a third party without any company

resolution, and that all proceeds from the sale were channeled into her personal account for her use. Upon realizing the 1st Respondent's intention to dispose of the remaining vehicles without authority, he placed caveats on them.

4. He avers that he learned that the 1st Respondent incorporated another company, MAFRAJ STOP N' PLAY CRIBS LIMITED, offering services similar to those of the 2nd Respondent and operating from the same location. He alleges that the 1st Respondent, as the sole director of the new company, has been using the facilities, including the motor vehicles of the 2nd Respondent to generate income for her new company, thereby defrauding the 2nd Respondent and breaching duties relating to conflicts of interest. Additionally, he avers that due to the ongoing issues, he has attempted to obtain information relating to the company, but the 1st Respondent has thwarted all his efforts. It was only recently that he obtained information from the 2nd Respondent's former accountant. From the documents supplied, one of which was a statement of financial position, it is evident that several loans were taken out by the directors for the years 2018, 2019, and 2020, amounting to Kshs.12,938,945/=, Kshs.6,938,348/=, and Kshs.4,271,517/=, respectively. He states that he was never involved in taking any loans on behalf of the company and never signed any documents approving such loans in his capacity as a director of the 2nd Respondent; he avers that

his signature must have been forged, which amounts to fraud. He further avers that despite the 1st Respondent not injecting any capital into the business, she has continued to mismanage the company's funds and has failed to account to him for the income generated, which has been detrimental to him as a shareholder and to the 2nd Respondent. He alleges that the 1st Respondent has failed to streamline the affairs of the company by not filing the annual returns and audited financial statements from 2017 to date.

5. The application was opposed by the Respondent through a Replying Affidavit sworn on 8th June 2025. In summary, the Respondent confirmed that both she and the Applicant incorporated the 2nd Respondent and were equal shareholders and directors of the company. She avers that the payment of dividends to shareholders was dependent on the company breaking even, and to date, the company has not reached that point. She further avers that she was responsible for the day to day management of the company, as the Petitioner was not actively involved in running it. She explains that they both agreed to be equal shareholders, and that prior to the Applicant joining the business, she had been running the enterprise as a sole proprietorship from 2014 to 2016. She started the business using funds from her chama as a day care in 2014 and for transport using the family vehicle, Xtrail, and they agreed that she be paid Kshs.50,000/= . The Applicant contributed capital for

purchasing the vehicles, while she managed the business, and at no point was the Applicant coerced into holding equal shares in the company. She further avers that the company began operations in 2018, following incorporation on 18th December 2017. The Applicant was responsible for handling the company's accounts and appointed Alphonse Okong'o, his close friend, as the auditor. She stated that the company's operations were suspended from 2020 to 2022 due to the effects of the COVID-19 pandemic. Additionally, the vehicles needed to comply with new NTSA social distancing regulations, which she could not afford. The insurance company cancelled all policies in 2021 due to non-payment of premiums, and all vehicles were grounded for being unroadworthy, ultimately being parked at their shared estate. She annexed copies of the cancelled insurance policies and WhatsApp correspondence with the Applicant.

6. She further avers that, despite knowing the financial condition of the business, the Applicant unilaterally closed the business account without her knowledge. From the attached email correspondence from Calvince Odhiambo, Regional Service Manager of NCBA Bank Kenya Limited, the Applicant acknowledged that the reason for the closure was the effects of COVID-19 on the business. She avers that the company resumed operations in 2023, with its main focus being transportation, as the day care was no longer operational. The landlord had evicted them on 24th October

2020 due to rent arrears, demolished the business unit, and retained all the day care facilities.

7. She further avers that the Applicant was approached by his friends but did not take any steps to rescue the business. Following the impact of COVID-19, she obtained loans and donations from friends to overhaul the vehicles, as the Applicant had blocked her. She also used funds from her company, Mafraji Stop N' Play Cribs, to maintain the vehicles and pay premiums from 2022 to date. She states that she never sidelined the Applicant in matters affecting the company; rather, the Applicant chose to stay away and only reached out after she sued him over their matrimonial properties in High Court Civil Suit No. E001 of 2025, filed on 21st January 2025. She avers that she had to keep the company running in its best interest after the Petitioner neglected his duties as a director. She further avers that, except for the email he sent on 2nd February 2025, to which the auditor responded, the Petitioner had never inquired into the company's affairs during the six years he was absent.
8. The Respondent avers that the Petitioner was aware of her intention to sell KCQ 559, as he is part of the Valley View Residents and had seen communications on the estate homeowners' WhatsApp group regarding stalled vehicles. She states that KCQ 559 could not undergo inspection because the Petitioner had taken the logbook, which was required for the inspection, and that the vehicle was

imported with engine issues; the Petitioner took the logbook in a bid to frustrate her efforts. (She has attached the WhatsApp correspondence on the release of the logbook, including a letter by the Estate Committee dated 17th July 2023.) She avers that she used the proceeds from the sale to clear debts that had accrued due to COVID-19, including insurance debts amounting to Kshs.100,000, KCG service Kshs.30,000, tyres for KCS & KCM at Kshs.44,000, replacement of KCS rims at Kshs.80,000, KCQ seat repairs at Kshs..40,000, legal fee deposit at Kshs.75,000, City Master release of KCG 020C at Kshs.24,000, and 4 bus tyres at Kshs 60,000, as well as fixing 14 seats to KCM 743L at Kshs.80,000, totaling Kshs.800,400, which she avers exceeded the vehicle's purchase price.

9. She further avers that she incorporated her company, Mafraji Stop N' Play Cribs, on 10th January 2022, after taking over from Empire Springs Academy, which had operated in Valley View Estate from 2012 to 2022. She assumed management in September 2022 after the owner left the country and rebranded it. She asserts that Mafraji Stop N' Play Cribs offers day care services only, and not transportation as alleged by the Petitioner. She states that there is no conflict of interest, as the 2nd Respondent ceased offering day care services following the eviction and demolition of their premises on 24th October 2020 due to rent arrears. She further states that the landlord retained

all facilities and raw materials after demolition and converted the premises into residential apartments.

10. She avers that when she resumed transportation services in 2023, she could not use the 2nd Respondent's business account, as it had been closed, and she could not open a new account without both directors' signatures. Consequently, she used the business account of her own company, to which she has accounted fully, as evidenced in the bank and M-Pesa statements. She states that she has not used the 2nd Respondent's resources to generate income for Mafraji Stop N' Play Cribs, as the two companies offer different services, and that, if anything, her company's income supports the 2nd Respondent, which is currently running at a loss. She avers that she has never taken any loan on behalf of the 2nd Respondent, and that the figures cited in the Petitioner's affidavit merely demonstrate the shareholders' contributions toward the company's assets over and above the nominal share capital of Kshs.100,000, reflecting the net value of the company at the relevant time; therefore, no loans were taken.

11. She states that the Petitioner fraudulently obtained a loan of Kshs.1,167,277 from a moneylender using the company vehicle KCG 020C as collateral, without her knowledge, in a bid to retaliate after their separation. He used the previous logbook, registered in his name, to portray himself as the owner, despite the vehicle having been transferred to the company and a new logbook issued.

She avers that after KCG 020C was repossessed and scheduled for auction, she filed a commercial suit, E5049 of 2023, to retain possession; the case is still pending before the court. She further states that, according to bank statements, M-Pesa statements, invoices, receipts, and attached excel sheets, the company earned an income of Kshs.1,237,200 in 2023 with expenditures of Kshs.1,798,350; in 2024, it earned Kshs.1,204,000 with expenditures of Kshs 1,470,811; and in 2025, it earned Kshs.966,000 with expenditures of Kshs.1,066,237. She asserts that the company owes her Kshs.1,500,000 as pending salary of Kshs.50,000 per month for the past 30 months from 2023 to date, and that the 2nd Respondent owes her company additional funds to maintain operations.

12. Regarding statutory returns, she submits that she has diligently filed them, whereas the Petitioner, as co-director, had a duty to file annual returns and audited financial statements but neglected this responsibility, having been in charge of accounting since incorporation. She states that the Petitioner breached his duty of care by authorizing a transaction that benefited himself at the company's expense, misappropriated company funds for personal gain, neglected the company's operations and financial health for the past six years, and failed to exercise proper skill and diligence when he unilaterally closed the company's business account. She contends that it is just for the 2nd Respondent to be wound up by the court under the

Companies Act, as the Petitioner and she can no longer work together. She further states that the orders sought in the application have been overtaken by events, as a joint account has already been opened to run the business, and that an injunction at this stage serves no purpose. She submits that the application should therefore be dismissed to allow the hearing of the main suit.

13. The Petitioner filed a Further Affidavit sworn on 1st August 2025, in which he comprehensively responds to the allegations made by the 1st Respondent and clarifies the circumstances surrounding the dispute. He disputes the claim that he consented to the sale of one of the Company's motor vehicles or absconded with the logbook, insisting that the sale was unlawful as there was no board resolution authorising it and no documentary evidence of a legitimate transaction. He further notes that the 1st Respondent's explanations regarding the use of the alleged sale proceeds are inconsistent, particularly because the expenditures she cites predate the purported sale. The Petitioner also raises concerns about the authenticity of several receipts produced, highlighting irregularities such as missing identifiers and features suggestive of alteration.

14. The Petitioner contends that the 1st Respondent has been improperly operating a parallel entity, Mafraj Stop N' Play Cribs Ltd, which operates from the same premises and in the same line of business as the 2nd Respondent. He asserts that the 1st Respondent deliberately set up this

company to appropriate the business of the 2nd Respondent and divert its goodwill, despite being a director of both entities, thereby creating a clear conflict of interest. He maintains that the 1st Respondent's narrative that the 2nd Respondent halted daycare operations in 2020 is not true and forms part of a strategy to justify the transfer of business to her own company.

15. On the issue of the Company's financial management, the Petitioner refutes the 1st Respondent's claim that he was unable to operate the Company bank account, insisting that the 1st Respondent never reached out to him regarding account access, nor did he attempt alternatives such as using a till number. He asserts that the 1st Respondent instead diverted Company revenue into the account of Mafraj Stop N' Play Cribs Ltd and into her personal accounts. According to the Petitioner, the 1st Respondent only contacted the bank about the Company account in June 2025, after being served with the present proceedings. He adds that, despite presenting bank statements, M-Pesa statements, and spreadsheets, the 1st Respondent has failed to provide audited accounts or verifiable financial records of the 2nd Respondent, noting that all documents produced relate to the parallel company and not to the 2nd Respondent.

16. The Applicant emphasizes that at no point has there been any board-approved agreement permitting the use of the 2nd Respondent's assets by Mafraj Stop N' Play Cribs

Ltd. Nevertheless, the 1st Respondent has continued to utilise the Company's vehicles for the benefit of her own entity, raising invoices and making payments exclusively through Mafraj Stop N' Play Cribs Ltd. The Applicant characterizes this conduct as a clear breach of fiduciary duty and a deliberate misappropriation of Company assets. He also highlights instances where the 1st Respondent refunded funds from the 2nd Respondent to her own company, describing this as self-dealing and further evidence of a conflict of interest. The Applicant notes that the Company's trial balance acknowledges the existence of directors' loans and reiterates his entitlement to reimbursement of Kshs. 9,570,223/= representing his capital injection. He challenges the 1st Respondent's claim for a monthly salary of Kshs. 50,000/=, insisting that no resolution or employment contract authorises such remuneration. He adds that the alleged losses cited by the 1st Respondent are unverified and cannot be relied upon in the absence of an independent audit, particularly because the financial records presented pertain to the parallel company rather than the 2nd Respondent.

17. The Applicant denies abandoning the business and attributes any operational difficulties to the 1st Respondent's mismanagement and diversion of funds. He further clarifies that a loan he took for vehicle KCG 020C was a personal loan, fully repaid before the vehicle's transfer to the Company. He rejects allegations that he

failed in his duties as director, maintaining that he was an active contributor, particularly during the Company's formative years. The Petitioner disputes the alleged debt owed by the 2nd Respondent to Mafraj Stop N' Play Cribs Ltd, asserting that no such agreement exists and that any expenses incurred should be borne by the 1st Respondent's company, as it was the primary beneficiary of the vehicles' use. He maintains that the 2nd Respondent is entitled to recover all income generated through the unauthorised use of its vehicles. In conclusion, the Petitioner asserts that the 1st Respondent has consistently failed to account to the shareholders and that an independent audit is necessary to establish the true financial position of the Company. He states that he will suffer irreparable harm if the reliefs sought in the application are not granted.

18. Pursuant to the directions issued by this Court, an order was made that the revenue collected from the income generated by the 2nd Respondent's Day care business and from the Motor Vehicles KCN 456U, KCM 743L, KCS 664W, and KCG 020C be deposited into an account in the Company's name or a joint account in the names of the shareholders. The Court also directed the parties to file written submissions. From the Court record, only the Respondent's submissions dated 8th September 2025 are on record, and the Court has not sighted any submissions from the Petitioner.

Respondent's submissions

19. The Respondent commenced her submissions by outlining the background of the application, noting that the Petitioner filed an application on 26th March 2025 seeking certain orders, to which the Respondents filed a Replying Affidavit on 8th June 2025 and a Further Affidavit on 8th September 2025. The Respondent emphasized that both parties are equal shareholders and directors of the Company, which they established together as husband and wife.
20. The Respondent identified three main issues for determination: first, whether the 1st Respondent should be restrained from misusing or diverting company income; second, whether an independent audit should be conducted to ascertain the true financial status of the Company; and third, whether the nature of the parties' relationship in forming and operating the Company is relevant to preventing an injustice.
21. In addressing the first issue, the 1st Respondent submitted that the Petitioner's claims are based on assumptions unsupported by evidence. She asserted that she has complied with all statutory and fiduciary duties as a director under Sections 140-146 of the Companies Act, including acting within her powers, promoting the success of the Company, exercising independent judgment, applying reasonable care and skill, and avoiding conflicts of interest.

The Respondent explained that the Petitioner disengaged from company operations in 2019, leaving communication entirely through WhatsApp groups and emails, and later unilaterally closed the business account in December 2020 without her knowledge, despite the business premises having already been evicted.

22. The 1st Respondent detailed the operational and financial challenges she faced following the Petitioner's withdrawal, including grounding of company vehicles, cancellation of insurance policies, and NTSA compliance issues. She highlighted her prior experience running the business as a sole proprietorship and her efforts in reviving the Company using personal funds, loans, and donations. She also established a separate company, MAFRAJ STOP N' PLAY CRIBS, to continue pre-school operations, which serves a distinct client base from the 2nd Respondent's transport services. The Respondent argued that the Petitioner's claims of conflict of interest and diversion of funds are unfounded, as she fully accounted for all transactions and never used the 2nd Respondent's income for personal gain. She asserted that the Petitioner's abandonment of the Company for six years, unilateral closure of accounts, and taking a personal loan using company assets demonstrate unclean hands, barring him from equitable remedies. She invoked the principle that "he who comes to equity must come with clean hands," citing **Finance and System Consultants Limited v Kenya Medical Properties**

Limited & 2 Others, Tribunal Case No. 126 of 2021, and **Kyangavo v Kenya Commercial Bank Ltd & Another,** to support the argument that the Petitioner cannot claim equitable relief while acting contrary to the Company's best interests.

23. The Respondent further relied on the doctrine of estoppel as articulated in **Mbura v Gikonyo, Tribunal Case E751 of 2023,** noting that the Petitioner induced a belief through his conduct by abandoning the Company and unilaterally closing accounts, and cannot now deny the Respondent's actions to keep the business running. Additionally, she cited **Sameja v Sal Tree Hotel Limited, Civil Appeal E079 of 2023,** and **Nguraman Limited v Jan Bonde Nielsen & 2 Others [2014] eKLR,** emphasizing the three pillars for an injunction prima facie case, irreparable harm, and balance of convenience, none of which she submits the Petitioner has satisfied.

24. On the issue of an independent audit, the Respondent expressed no objection, stating that an audit would clarify the Company's financial position and substantiate or dispel allegations of diversion of funds and conflicts of interest. She emphasized that she has produced all relevant financial statements within her possession and called on the Petitioner to produce his documents from 2018 to 2020.

25. Regarding the relevance of the parties' relationship, the Respondent submitted that their status as former spouses and co-founders establishes equitable expectations. She

urged the court to examine the practical reality of the informal operations of the Company, which never strictly adhered to corporate formalities, and to apply principles of equity and natural justice to prevent one party from being unjustly enriched at the expense of the other.

26. In conclusion, the Respondent argued that the Petitioner has no prima facie case, will not suffer irreparable harm, and that the balance of convenience favors the 1st Respondent, who acted diligently to keep the Company operational despite the Petitioner's long absence. She urged the court to prioritize an independent audit and to evaluate the Company's operations in light of the underlying reality of the parties' shared enterprise.

Analysis and Determination

27. I have considered the affidavits by parties and submissions filed by the Respondents and it is my view that there the issues for determination are;

- a. Whether the Petitioner has made out a prima facie case that he is entitled to the interim reliefs sought for injunctions, impounding of vehicles, appointment of an independent audit firm and valuation**
- b. Whether an independent audit and valuation should be ordered and the appropriate scope**
- c. Whether the court should order impounding of the motor vehicles.**

d. Whether the Petitioner is entitled to a mandatory injunction preventing the 1st Respondent from using Company assets to generate income for Mafraj Stop N' Play Cribs Ltd

Whether the Petitioner has made out a prima facie case that he is entitled to the interim reliefs sought for injunctions, impounding of vehicles, appointment of an independent audit firm and valuation

28. The Petitioner's case is grounded on his position as an equal shareholder and director of the Company. He alleges that since the collapse of the marital relationship, the 1st Respondent unilaterally took control of Company operations, denied him access to financial records, diverted income to her personal M-Pesa and bank accounts, utilised Company assets for the benefit of a separate company, Mafraj Stop N' Play Cribs Ltd and even sold a Company motor vehicle without authority. He contends that these actions place Company assets at risk of dissipation and that the Court's intervention is necessary to preserve the substratum of the dispute pending a proper audit.

29. The Respondent does not dispute equal shareholding but presents an alternative narrative. She states she ran the day-care business even before incorporation, that COVID-19, eviction, and lack of financial support from the Petitioner disrupted operations and that she used her own finances and those of her parallel company to keep the

business afloat. She asserts that the Petitioner abandoned the business, closed the Company's bank account unilaterally and is therefore approaching the Court with unclean hands. She denies wrongdoing and claims that any disposal or use of vehicles was driven by necessity rather than misappropriation. She does not oppose the appointment of an auditor.

30. The test for granting interlocutory injunctive relief remains the **Giella v Cassman Brown principles**, together with the heightened threshold applicable to mandatory relief and to orders that are coercive or akin to sequestration. The Court's previous directions required revenue generated from the day care and from the listed vehicles to be deposited into a Company account or joint account. This was to safeguard proceeds pending further orders. The affidavits show the Petitioner alleges continued diversion, whereas the Respondent denies impropriety and claims the Company operated at a loss.

31. The material before the Court shows a live, genuine dispute as to the financial management of the Company, the use of its vehicles, and whether proceeds were applied for Company benefit. Given the equal shareholding and the lack of audited accounts, there is a real risk that without limited preservation orders the subject matter may be altered in a manner that renders eventual relief illusory. However, the record does not show imminent or ongoing clandestine disposal of the vehicles. The Petitioner's request for

impounding is not supported by evidence of immediate risk warranting such drastic intervention. A less intrusive but effective approach is to prevent any further disposal or transfer of Company vehicles without mutual consent or leave of Court.

32.As regards the alleged use of Company assets for Mafraj Stop N' Play Cribs Ltd, the facts are disputed and this question is better addressed through a forensic audit rather than through a sweeping mandatory injunction. Nonetheless, a prohibitory order preventing future use of Company assets for the benefit of another entity without proper authority is necessary to preserve the Company's position until findings are established.

33.The Court therefore finds that the Petitioner has demonstrated a prima facie case warranting limited, carefully tailored preservation orders.

Whether an independent audit and valuation should be ordered

34.The Petitioner seeks an independent business review and a valuation of the Company's shares covering the period from January 2017 to date on the basis that there are unexplained loans and alleged misapplication of funds, and that the accounts presented are either absent or unreliable. The Respondent expressly says she has no objection to an independent audit and contends the audit would clarify matters; she also points to the absence of audited accounts

for earlier years and invites the Petitioner to produce his missing documents. Both parties stress different facts the audit would test. For the Petitioner, it is loans, proceeds of sale, directors' loans and alleged forgery; For the Respondent, it is the actual revenues and expenditures, and debts incurred during COVID).

35. Given the parties are equal shareholders and directors and there is a real dispute on the company's financial position and whether assets were used for another company's benefit, an independent forensic review and valuation is an appropriate neutral means to establish the factual baseline. The Respondent's acceptance reduces the risk that an audit order represents an oppressive unilateral step. The scope must be proportionate and targeted to the areas in controversy that is, examination of bank statements, M-Pesa transactions, invoices, receipts; review of vehicle ownership records and any transfers; analysis of directors' loan accounts; scrutiny of any proceeds from sale or utilisation of Company assets; assessment of any benefit flowing from the use of Company assets by Mafraj Stop N' Play Cribs Ltd; and preparation of an independent valuation of the Company and its shares.

36. Given the consensus that an audit is necessary and the nature of the disputes, the Court finds this relief appropriate and proportionate.

Whether the court should order impounding of the motor vehicles

37. The Petitioner prays that the motor vehicles listed be impounded to “stop continued fraud” and to prevent disposal. He avers a prior sale of vehicle KCQ 559Z without company authority and that further disposals were imminent. The Respondent explains assets were grounded and some sold to meet debts; she avers she accounted for proceeds and that one vehicle is the subject of separate commercial proceedings (E5049 of 2023). The Court must weigh the immediacy and likelihood of dissipation against the interference with property rights and commercial operation. The impounding or seizure of assets is an exceptional step and typically requires evidence that without sequestration the assets will be irretrievably dissipated or removed beyond the Court’s reach. Where the Court has already placed steps to secure funds into a joint account and has directed no disposal without consent, an immediate blanket impounding order may be unnecessary and disproportionate unless there is credible evidence that the Respondent is continuing to sell or conceal the vehicles. The parties’ filings indicate at least one prior unauthorised sale is alleged; however, the Respondent’s explanation and the existence of other proceedings concerning at least one vehicle complicate the factual picture.

38.I decline to make a general order for the immediate impounding of all the listed motor vehicles at this stage. Instead, this court orders that no vehicle registered in the name of the Company or vehicles claimed by the Company shall be sold, transferred, encumbered or otherwise dealt with by either party without the written consent of both directors or leave of this Court; any existing caveats or notices placed by the Petitioner shall remain effective pending the audit and the substantive hearing. If either party establishes, on evidence, that any vehicle is being actively prepared for clandestine disposal or removal, such party may apply for preservation orders supported by specific evidence.

Whether the Petitioner is entitled to a mandatory injunction preventing the 1st Respondent from using Company assets to generate income for Mafraj Stop N' Play Cribs Ltd

39.The Petitioner alleges the Respondent set up a parallel company and uses Company assets and goodwill to benefit that entity. The Respondent denies improper use, asserts the parallel company provides distinct services, and says any benefit to her company was to keep vehicles operational when the Company's account was closed. A mandatory injunction that compels action or restrains specific conduct already carried out requires a strong prima facie case and evidence that the status quo must be

restored to prevent irreparable harm. Where use of assets for another company's benefit is alleged, the Court must ascertain whether there was express or implied authority for such use, and whether the transferee company received income that ought to be accounted to the Company.

40. Given the factual dispute and the availability of an audit that can establish whether the vehicles and income were used for the benefit of Mafraj and whether the Company was compensated, issuing a mandatory injunction now would be premature.

Whether the Company ought to be wound up

41. The Respondent in her response to the present application prayed that the 2nd Respondent be wound up. The Petitioner opposes this.

42. Winding up a company is a substantive remedy with far-reaching consequences; it is ordinarily sought in a substantive application after evidence on the company's affairs has been tested. An interlocutory application for preservation and for forensic accounting does not require an immediate determination on winding up. Moreover, the parties are equal shareholders and the audit may disclose whether the Company is viable and whether mismanagement, if proved, justifies winding up. It would be premature to wind up the Company pending the audit and the hearing of the main suit.

43. Based on the foregoing, I hereby order that;

- a. An independent forensic audit and valuation of Stop N/Play Cre'che Services Ltd be undertaken covering the period 18 December 2017 to the date of this ruling that is 18th December 2025.
- b. All income derived from the Company's day-care business, and the motor vehicles KCN 456U, KCM 743L, KCS 664W and KCG 020C shall continue to be deposited into the joint account in the names of both directors.
- c. Pending conclusion of the audit and hearing of the main suit, the 1st Respondent is restrained from the use of the Company's assets for the benefit of Mafraj Stop N' Play Cribs Ltd.
- d. Costs of this application shall be in the cause.

Orders accordingly.

Dated, signed and delivered at Machakos this 18th day of December 2025.

RHODA RUTTO
JUDGE

In the presence;

.....Petitioner

.....1st respondent

.....2nd respondent

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