Soni & another v Soni & another (Commercial Case E069 of 2025)
[2025] KEHC 18763 (KLR) (11 December 2025) (Ruling)

Neutral citation: [2025] KEHC 18763 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT MOMBASA

COMMERCIAL CASE E069 OF 2025

G MUTAI, J

DECEMBER 11, 2025

BETWEEN

HARESH VRAJLAL DAMODARDAS SONI ..... 1ST PLAINTIFF

NARESH JAYANTILAL RANPURA ..... 2ND PLAINTIFF

AND

DHAVAL VINODBHAI SONI ..... 1ST DEFENDANT

SHREEJI ENTERPRISES (KENYA) LTD ..... 2ND DEFENDANT

RULING

1. Before the Court is a Notice of Motion application dated 16th October 2025 filed by the plaintiffs/ applicants. The same is brought under Order 40, Rules 1, 2, and 4 of the Civil Procedure Rules, 2010, and Sections 1A, 1B, 3A, and 63 of the *Civil Procedure Act*. the plaintiffs/applicants seek the following orders: -

    1. Spent;
    2. Spent;
    3. Spent;
    4. Spent;
    5. That this honourable court do grant an injunction restraining Dhaval Vinodbhai Soni, the first defendant, whether by himself or howsoever else from exercising any powers or duties as a director of Shreeji Enterprises (Kenya) Ltd or managing its affairs, including taking any adverse or other steps as against the plaintiffs whether individually or in their capacity as director of shareholder of or in the second defendant, Shreeji Enterprises (Kenya) Ltd pending the hearing and determination of this suit;

6. That this honourable court do grant an injunction restraining Dhaval Vinodbhai Soni, the first defendant, from voting at any meeting of the company or exercising any other rights in respect of the aforesaid 1,000,000 shares, otherwise than in accordance with the direction of the first and second plaintiff, pending the hearing and determination of this suit;

7. That this honourable Court do grant an injunction restraining Dhaval Vinodbhai Soni, the first defendant from transferring or howsoever dealing with the aforesaid 1,000,000 shares (whether by sale, change pledge, securitization or in any other manner) otherwise than in accordance with any directions issued by the first and second plaintiffs, or until further order or the Court pending hearing and determination of this suit;

8. That the costs of this application be awarded to the plaintiffs.

2. The grounds upon which the application is based, as disclosed in the certificate of urgency, the grounds in the body of the said motion, and also in the supporting affidavit sworn by Haresh Vrajlal Damodardas Soni in Mombasa on 16th October 2025, are that Haresh Vrajlal Damodardas Soni (hereafter "Haresh") and Dhaval Vinodbhai Soni (hereafter "Dhaval" or the "1st defendant" were the initial shareholders of Shreeji Enterprises (Kenya) Ltd (hereafter "Shreeji" or the "2nd defendant") with one share each. Shreeji was incorporated as a Kenyan private limited liability company on 29th November 1993. It is contended that since 1994, Shreeji has operated on a quasi-partnership basis, with three families having equal stake: that of Haresh, and his sisters, Shobhnaben Nareshbhai Ranpura (represented by Naresh Jayantilal Ranpura, hereafter "Naresh") and Rekhaben Vinodbhai Soni (represented by Dhaval). The plaintiffs contend that Naresh and Dhaval are directors of Shreeji, representing their respective families, while Haresh is the chairman.

3. Haresh contends that the quasi-partnership relationship arose as a result of his promise to his parents, particularly his mother, that he would ensure that the families of his sisters, Shobhnaben Nareshbhai Ranpura and Rekhaben Vinodbhai Soni, would have a steady and sure source of income. He averred that this arrangement was well known to Dhaval. As a result of the said promise Haresh contends that he introduced Dhaval into Shreeji's business in 1993 and Naresh in 1994 without any capital contribution on their part and that subsequently other family members, Gaurang (brother of Dhaval) and the sons of Naresh and Haresh, Umang, Jay, Vimal and Priyank were introduced into the business on the same basis, as a result of which Shreeji's business grew and expanded. Haresh further contended that the business and profits of Shreeji have always been treated as a quasi-partnership, with the three families sharing profits on a "parity" basis.

4. It is contended that in 1998, Haresh transferred 49 shares allotted to him on 11th September 1998 to Dhaval, to be held in trust for him, and that Dhaval executed a declaration of trust in favour of Haresh on the said date. Haresh averred that there was no consideration for the said transfer. There were subsequent allotments made out of the retained profits of the company and the proportionate additional shares, which were made to Dhaval and are accountable by Dhaval to Haresh. Haresh contends that were it not for the philosophy under which Dhaval and Naresh were brought into the business of Shreeji, then the entire shareholding in Shreeji would have been held in constructive trust for Haresh.

5. The plaintiffs averred that Haresh and Naresh have guaranteed the debts of the company in hundreds of millions of shillings and that it is inconceivable that they would do so if they had no beneficial interest in Shreeji. It is further averred that Dhaval holds 499,000 shares in Shreeji in Trust for Haresh and 166,667 shares in trust for Naresh. Haresh, on the other hand, has 166,667 shares (out of what Dhaval holds in trust for him) in trust for Naresh. As a result, Haresh, Dhaval, and Naresh, representing their

respective families, each hold 33.33% of Shreeji. Due to the parties' relationship, Haresh facilitated the acquisition of family homes for his sisters' families in Thigiri Grove, Nairobi, and Nyali, Mombasa.

6. Haresh averred that in 2023, he tried to have the shares held in trust for him by Dhaval transferred to him. Dhaval, however, was reluctant to do so. When a further request was made in 2024, following the death of Haresh's mother, Dhaval offered to transfer only a 50% share to Haresh, with Haresh free to transfer half of that share to Naresh if he wished. Subsequently, he has evinced a desire to have the company split, a proposition which the 1st plaintiff reluctantly considered, subject to the families being treated equally and inter-company accounts being agreed upon, something which has not happened.

7. It is contended that Dhaval is now asserting sole ownership of the shares in the company, and together with his brother Gaurang has denied entry to Haresh and Naresh into the Company's premises. The plaintiffs are apprehensive that he may sell the company's assets. He has also denied them access to the company premises, financial records, and documents.

8. The plaintiffs aver that there is a grave danger to the ownership interest as they personally guaranteed the company's borrowing and that they are being denied income from Shreeji and a beneficial interest in the said company. They contend that Dhaval's conduct is in breach of the provisions of sections 143, 144, and 145 of the *Companies Act* that require him to act for the benefit of members as a whole and that by asserting sole ownership, he was in breach of his fiduciary duty to the plaintiffs.

9. The plaintiffs sought an order preserving the assets of the company, as these were at risk of being wasted. They contended that if Dhaval continued to discharge his duties as a director, he would manipulate Shreeji's company accounts or records, or dissipate its assets to the detriment of the plaintiffs. They contend that there was a clear and present danger that the 2nd defendant would default in its obligations. If that happened, they would suffer injury.

10. The Court considered the matter on 20th October 2025. Being satisfied that the matter is urgent, the Court issued interim orders restraining Dhaval from transferring shares in Shreeji Enterprises (Kenya) Limited and from charging, pledging, or securitizing the same, pending hearing inter partes.

11. The averments of the 1st Plaintiff were reiterated by the 2nd Plaintiff in an affidavit he swore on 16th October 2025.

12. The application is opposed. The defendants/respondents filed a replying affidavit sworn by Dhaval on 5th November 2025.

13. In his deposition, in response, Dhaval averred that Haresh traded under a company called Shreeji Transporters 1990, whose shareholding was Haresh and his late mother. He stated that in 1993, Shreeji (the 2nd defendant/respondent) herein was incorporated, and he and Haresh had one share each.

14. Dhaval further stated that in 1998, there was a banking crisis in Kenya, which led to the collapse of Bullion Bank, which was the main banker of Shreeji Transporters1990. As a result of the said crisis, Shreeji Transporters 1990 was left to die as it had many issues with the bank. As a result, the 2nd defendant was left to carry on the business. The 1st plaintiff was harassed by banks, including threats of criminal charges, which led him to leave the county.

15. Dhaval averred that it was he and his brother Gaurang who handled the business of Shreeji. Gaurang joined the company in 1995. The 2nd plaintiff also joined the company in 1995, initially as a salaried employee. In 2001, he was made a director. Dhaval contends that, despite being a director, Naresh held no shares in the company.

16. Dhaval deposed that Haresh resigned as a director in 1998 and that he created a trust deed for 49 shares, making his share 50. He stated that he bought 900 shares in the company for cash consideration, as evidenced by the minutes of 4th January 2000. As a result, he held 999 shares in Shreeji, including 49 shares he held in trust for Haresh. He annexed official returns filed with the Companies Registry and Form CR12 in support of his contention.

17. He further deposed that subsequently his brother Gaurang and Naresh became directors but with no shares, earning a salary, which is the situation to date. When normalcy in the banking sector resumed, Haresh came back to Kenya. Upon his return, he focused on other businesses with Shreeji's backing. Dhaval denied that there was a trust relationship regarding the shares in Shreeji. He contended that Haresh had always signed the company returns, which show the correct shareholding. He averred that the only time he and Haresh had equal shares was when each of them had one share. He denied that the company had ever been a quasi-partnership, asserting that Shreeji was a distinct legal entity subject to shareholding. He stated that if a quasi-partnership existed, it would have been replicated in the related companies and also in Shreeji Transporters 1990.

18. Dhaval denied that the 49 shares he held in trust for Haresh translate into a 49% shareholding. He stated that Shreeji is a totally new company, separate from Shreeji Transporters 1990, which stopped operating. Therefore, it could not be said that there was any quasi-partnership relationship.

19. The 1st defendant reiterated that Naresh was appointed as a director in 2001, and not 1994 as deponed to by the 1st plaintiff, and that he has been sufficiently compensated for his duties as a director.

20. Dhaval averred that dividends, profits, names, and benefits had always been paid to the plaintiffs commensurate with the profits. Regarding the residences, Dhaval averred that they were bought with salaries earned from the company and a loan from NIC Bank, not as a favour, as is being suggested.

21. The 1st plaintiff was accused of being evasive when requested to sit and settle intercompany accounts relating to the businesses established and running by, and with the support and capital extended from Shreeji. He denied preventing Haresh and Naresh from accessing their offices. He averred that they and their children removed their personal belongings and even company property, leaving the place "a shell with only furniture". He, however, contended that they come into the premises for disturbance purposes. Regarding access to company accounts and financial statements, he asserted that they could be provided in accordance with the law.

22. Dhaval stated that a complaint was made against Naresh after he registered the property paid for by the company in his personal name. He deposed that if it were established after investigations that the complaint was without basis, he would compensate Naresh.

23. Dhaval deposed that he had run the company with dedication even during its darkest period and that no unlawful conduct could be attributed to him in the running of the company. He denied that the plaintiffs had made any demand for shares. He stated that the Court should be reluctant to interfere with the company's operations.

24. The 1st plaintiff filed a further affidavit, which he swore on 3rd November 2025, in which he set out his difficulties in assessing the company premises.

25. The applicant was canvassed by way of written and oral submissions; whose precis I shall set out below.

26. The submissions of the plaintiffs/applicants are dated 6th November 2025. Vide the said submissions, it was urged that Dhaval Vinodbhai Soni holds all the 990,000 shares in the 2nd defendant/respondent on a constructive and or resulting trust for the plaintiffs as set out in the plaint.

27. Mr. Khagram, the learned counsel for the Plaintiffs/applicants, submitted that the affidavits sworn by Dhaval were plainly evasive, did not rebut any of the facts asserted by the plaintiffs upon which the claim was based. In particular, the deposition was silent on how Dhaval's mother was introduced into the business. In Mr Khagram's view, the facts as asserted in the supporting affidavit remained unrebutted.

28. Counsel stated that the contents of paragraph 39 of the replying affidavit show that access by the plaintiffs/applicants to bank accounts and financial statements had been denied.

29. It was urged that Dhaval provided no evidence that he made a capital contribution to the company. Regarding share transfers, it was submitted that all share allotments are made through an ordinary or extraordinary resolution of the company passed at a general meeting. The allotment of 900 shares to Dhaval in January 2000 was, it was urged, fraudulent, as no resolution to that effect was made in a general meeting. Counsel submitted that the said allotment was fraudulent, being a scheme by Dhaval to usurp ownership of the company, something that he did not have.

30. Regarding the question of jurisdiction, Mr Khagram submitted that this Court has jurisdiction to hear and determine the matter as the 2nd defendant does business in Nairobi and Mombasa. That being the case, there was no reason to transfer the matter to Nairobi. In support of the said contention, I was referred to the case of Kanampiu & another v Marithi [2025] KEHC 7699 (KLR), where H. Nyaga, J, stated as follows: -

> " 22. In my view, while the said section provides a guide on the place of filing suit, it is applicable to courts whose territorial jurisdiction is defined and cannot override the Constitutional provisions regarding the jurisdiction of the High Court."

31. Mr Khagram distinguished the case of Musa v Mustafa & another [2025] KECA 677 (KLR), relied on by the defendants/respondents' counsel, stating that what was in issue in the said appeal was the exercise by the High Court of its supervisory jurisdiction.

32. Mr Khagram submitted that there was a quasi-partnership. He further submitted that the plaintiffs/applicants could not have guaranteed loans exceeding Kes. 4,000,000,000/- if they were not shareholders, and that there would have been no need for them to do so if they lacked a stake in the 2nd defendant/respondent.

33. Counsel urged that the business of the company needed to be preserved. He expressed a worry that the company was under pressure from banks and may not be able to meet its obligations. He urged that, as the company's director and chairman, the plaintiffs couldn't be shut out of running the company. He submitted that subsequent allotments made out of retained profits should be subject to resulting trusts. He prayed that the application be allowed as prayed.

34. The submissions of the defendants/respondents are dated 10th November 2025. In the oral and written submissions, Mr Oonge, learned counsel for the defendants/respondents, submitted that this court lacks territorial jurisdiction to hear and determine the matter, as the company's registered office and principal place of business are in Nairobi. Further, the 1st defendant works and resides in Nairobi, as does the 1st Plaintiff, and of the litigants, only the 2nd Plaintiff resides in Mombasa. Counsel urged that filing the case in Mombasa would be inconvenient and would place the defendants in hardship and

cause them to incur unnecessary costs. Mr. Oonge relied on the case of Musa v Mustafa & another [2025] KECA 677 (KLR), where it was held that

> " Suffice to say that, notwithstanding section 18 of the *Civil Procedure Act*, there is only one High Court in Kenya which enjoys unlimited geographical limitations but has different administrative units and sits in different places. As such, there is no legal difficulty whatsoever in the High Court sitting in one place to transfer a suit or appeal to be heard at the High Court sitting in another place if the ends of justice are better served that way."

35. Counsel denied that the 1st defendants held shares in trust for the plaintiffs. In support of his contention, he referred the Court to the company's annual returns for various years, which he stated set out the share movements. He further stated that what the returns show is the correct share position of the company. The returns he submitted had, in many cases, been signed by both plaintiffs. Counsel submitted that the returns had not been disputed nor had an allegation of fraud been levelled against the 1st defendant/respondent.

36. Counsel submitted that it would be wrong for the Court to prevent a director of a company from exercising powers or duties of a director and to restrain a majority shareholder or director from voting at a meeting of the company. Mr Oonge submitted that the company law of Kenya did not envision anything of the sort. He urged that the company should be run strictly in accordance with the provisions of the *Companies Act*.

37. Mr Oonge further submitted that the Court's power to interfere with the internal affairs of a company was circumscribed to situations where the acts complained of were ultra vires, or were of fraudulent character, or not rectifiable by ordinary resolution. Counsel relied on the case of Savannah Heights Limited & 3 others v Savannah Cement Limited & 3 others [2021] KECA 582 (KLR) and In Re K Boat Service [1998] KEHC 39 (KLR).

38. Counsel denied that there had been mismanagement of the company, contending that no evidence of mismanagement had been rendered. He submitted that the court should not be drawn into the realm of speculation.

39. On the question of the investigations by the Directorate of Criminal Investigations, it was urged that the Commercial Court shouldn't get involved in such matters and that it would be better if the complaint remained with the competent body.

40. Counsel thus urged that the application be dismissed with costs.

41. I have very carefully considered the Notice of Motion application before me, the supporting affidavits, the annexures thereto, the supplementary affidavit, the replying affidavit of the 1st respondent, the parties' skeletal submissions, as well as the oral submissions made by Mr Khagram and Mr Oonge.

42. I note that the dispute raises several issues which this Court must address. I will set out the issues below. These are: -

    1. Whether the Court has jurisdiction to hear and determine the matter;
    2. Whether the plaintiffs/applicants have a prima facie with a probability of success;
    3. If the damages likely to be suffered by the plaintiffs/applicants if the application is not allowed can adequately be compensated by an award of damages;
    4. Where the balance of convenience lies; and

5. Who should bear costs?

43. The counsel for the defendants/respondents has urged that the Court has no jurisdiction and that this matter should have been filed in Nairobi, where most of the parties reside or are located. In litigation, jurisdiction is a foundational concept. In the laconic words of Nyarangi JA in Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] KECA 48 (KLR), jurisdiction is everything. The learned Judge of Appeal stated that: -

> "I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity, and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law down tools in respect of the matter before it, the moment it holds the opinion that it is without jurisdiction."

44. Supreme Court made a similar holding in the case of Macharia & another v Kenya Commercial Bank Ltd & 2 others [2012] KESC 8 (KLR). The apex Court held that: -

> "A Court's jurisdiction flows from either *the Constitution* or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by *the constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsel for the first and second respondents in his submission that the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings."

45. What then is the jurisdiction of the High Court? Article 165 of *the Constitution* of Kenya, 2010, creates the High Court. The jurisdiction of the High Court is stated in Article 165(3) (a), being: -

> "subject to clauses (5), the High Court shall have: -
>
> a. Unlimited original jurisdiction in criminal and civil matters."

Section 5 of the *High Court (Organization and Administration) Act* states that the High Court shall exercise: -

SUBPARA a.

The jurisdiction conferred to it by Article 165(3) and (6) of *the Constitution*; and

SUBPARA b.

Any other jurisdiction, original or appellate, conferred it by an Act of Parliament."

46. Counsel for the respondents relied on the case of Musa v Mustafa & another [2025] KECA 677 (KLR) in support of his contention. I have read the said decision carefully. In my view, the issue considered by their ladyships and his lordship was whether one High Court could transfer a suit or an appeal to another High Court. Their thunderous response was that the High Court, on prudential grounds, could make such an order. I don't see in the said decision a support for the respondent's counsel's submissions that the High Court's jurisdiction is somehow constrained and that it must always transfer a matter before it, if the litigants reside elsewhere within the Republic of Kenya, Article 165(3) of *the Constitution*, notwithstanding.

47. I agree with the decision of Mshila, J, in Kassam & another v Pearl Beach Hotels t/a English Point Marina [2022] KEHC 14132 (KLR) and H. Nyagah, J, in Kanampiu & another v Marithi [2025] KEHC 7699 (KLR) that the High Court has original jurisdiction in civil and criminal matters and that it can hear matters arising anywhere within the Republic of Kenya.

48. Counsel for the respondent submitted that hearing the matter in Mombasa would be inconvenient to it, as only the 2nd Plaintiff resides in Mombasa. With respect, this may have been the case in the past. It isn't so presently. Most Court sessions are virtual. In a similar vein, all Court filings are also virtual. It is highly unlikely that the hearing on this matter will be in person. That being the case, I am not persuaded that the objection grounded on territorial jurisdiction has any merit. The same is dismissed.

49. Having dismissed the objection regarding jurisdiction, I must consider whether the orders the plaintiffs/applicants seek should issue. An injunction is an equitable remedy.

50. The conditions for the grant of an injunction were settled by the Court of Appeal for Eastern Africa in the case Giella v Cassman Brown & Co Ltd (1973) EA 358. In the said case, Spry, VP, stated as follows at page 360: -

> " The conditions for the grant of interlocutory injunction are now well settled in East Africa. First, an applicant must show a prima facie with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which would not be adequately be compensated by an award of damages. Thirdly, if the Court is in doubt, it will decide the case on the balance of convenience."

51. The Court of Appeal expounded on the said requirements in the case of Nguruman Limited v Jan Bonde Nielsen & 2 others [2014] KECA 606 (KLR). The Court observed that the conditions in the Giella case are considered sequentially. It held that: -

> " 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. If the applicant establishes a prima facie case that alone is not a sufficient basis to grant an interlocutory injunction, the court must further be satisfied that the injury the respondent will suffer, in the event the injunction is not granted, will be irreparable. In other words, if damages recoverable in law is an adequate remedy

> and the respondent is capable of paying, no interlocutory order of injunction should normally be granted, however strong the applicant's claim may appear at that stage. If prima facie case is not established, then irreparable injury and balance of convenience need no consideration. 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."

52. The first condition that the plaintiffs must show is the existence of a "prima facie case." Before determining whether there is a prima facie, the Court must first define what a "prima facie" case is. In Mrao Ltd v First American Bank of Kenya Ltd & 2 others [2003] KECA 175 (KLR), it was held that a prima facie case is:-

> " 17. So what is a prima facie case? I would say that in civil cases it 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 as to call for an explanation or rebuttal from the latter."

53. Does a prima facie case exist in this matter? I note that the 1st plaintiff/applicant and the 1st defendant/respondent agree that the 2nd defendant/respondent was incorporated in 1993, with each of them having one share. They further agree that in 1998, due to a banking crisis involving Bullion Bank, the 1st plaintiff/respondent was forced to flee Kenya. They also agree that the 1st defendant/respondent signed a declaration of trust for 49 shares, which he held in trust for the 1st plaintiff/applicant. It is agreed that there are related companies for which they are still negotiating accounts.

54. The disagreement arises from the allotment of shares in the year 2000 to the 1st defendant/respondent, whether the 1st defendant/respondent contributed to the capital of the company, whether there is a quasi-partnership relationship, and whether any allotment of shares arising from retained profits should be subject to the resulting trust or constructive trust. The plaintiffs aver that the 1st defendant/respondent holds shares in trust for the 1st plaintiff/applicant, and that the three families effectively own the 2nd defendant in equal shares.

55. The 1st and 2nd plaintiff deposed in great detail about the alleged quasi-partnership structure. In his response, the 1st defendant/respondent stated that he purchased 900 shares in 2000 but provided no evidence of consideration. There was also no rebuttal of the averments made in the depositions of the plaintiffs, save for what appears to me to be bare denials.

56. From the documents filed, it is evident that the 1st and 2nd plaintiffs/applicants are guarantors of the credit facilities advanced to the 2nd defendant/respondent by its bankers. On a prima facie basis, it is unlikely that they would be willing to guarantee loans whose sums exceed Kes.4,000,000,000/- if they, and in particular, the 2nd plaintiff had no stake in the company.

57. Although it has been denied that a quasi-partnership could exist, I note that at this point the existence of such a structure cannot be ruled out. This is so because of the history of Shreeji Transporters 1990 and Shreeji, and is discernible from the affidavit of the 1st defendant/respondent in the following paragraphs: -

> " 7. That the company Shreeji Transporters 1990 eventually was left to die because of many issues with the bank. This left the 2nd defendant to carry on the business."

...

> " 18. That Haresh mainly concentrated on other companies with the backing and support of Shreeji Enterprises. These are the companies that are referred repeatedly in the affidavit when there is a mention of intercompany accounts."

58. The parties appear to have contributed to the establishment and the growth of the 2nd defendant; there appears to have been joint management and decision making in practice before the relationship soured; there was mutual expectation of involvement in the business; the parties appear to have been held out as co-owners and had access to the accounts.

59. Based on the foregoing, I am satisfied that there is a prima facie case which the Court should consider on the merits during the hearing of the main suit.

60. I have warned myself that the Court is not required to make a final determination of the issues in contest at this moment, nor could it otherwise do so without hearing the main suit. What I am required to do is to weigh and determine whether an injunction should issue (see Mbuthia v Jimba Credit Finance Corporation & another [1988] KECA 116 (KLR)).

61. Will the plaintiff suffer irreparable injury if the injunction is not granted? In the case of Pius Kipchirchir Kogo v Frank Kimeli Tenai [2018] KEELC 2424 (KLR), it was held that: -

> " Irreparable injury means that the injury must be one that cannot be adequately compensated for in damages and that the existence of a prima facie case is not itself sufficient. The applicant should further show that irreparable injury will occur to him if the injunction is not granted and there is no other remedy open to him by which he will protect himself from the consequences of the apprehended injury. "

62. From the documents adduced, it would appear that the plaintiffs are guarantors of the obligation of the company to an amount exceeding Kes.4,000,000,000/-. That is a huge amount by any standards. If the company is mismanaged, as apprehended, the plaintiffs/applicants will most certainly suffer irreparable injury. To the best of my knowledge, not many institutions can deal with debt of that magnitude.

63. I am not in doubt that an injunction should issue in this case, but even if I were, it would appear to me that the balance of convenience tilts in favour of granting an injunction. The plaintiffs/applicants will suffer greater prejudice if the injunction is denied, as they will be unable to access the company's accounts and records despite being directors and guarantors.

64. In the case of Paul Gitonga Wanjau v Gathuthi Tea Factory Company Ltd & 2 others [2016] KEHC 7263 (KLR, the Court stated as follows: -

> " As for the balance of convenience, I reiterate what I stated above, "the court makes a determination as to which party will suffer the greater harm with the outcome of the motion. If the applicant has a strong case on the merits or there is significant irreparable harm, it may influence the balance in favour of granting an injunction.[20]The court will seek to maintain the status quo in determining where the balance on convenience lies." Considering the facts of this case in totality, I find that the balance of convenience demands that the status quo be retained."

65. What orders should be issued? The plaintiffs/applicants seek, inter alia, orders preventing Dhaval from running the company. Those prayers are opposed by the defendants/respondents on the grounds that the High Court would be engaging in judicial overreach if it did so.

66. In Savannah Heights Limited & 3 others v Savannah Cement Limited & 3 others [2021] KECA 582 (KLR), the Court of Appeal held that: -

> "24. From the decisions we have cited, it is clear that courts will only interfere with the internal management of a company where the act complained of is ultra vires or is of a fraudulent character or not rectifiable by an ordinary resolution."

67. Questions of possible fraud have been raised in this after. The plaintiffs/applicants aver that they have been denied access to a company in which they are directors, and whose loans they have guaranteed. In my view, there can be no wrong without a remedy. That being the case, this matter calls for carefully calibrated orders that allow the company to operate as a going concern, while the merits of the suit are tested during the hearing.

68. Having found merit in the application, and taking into account the need for the 2nd defendant/respondent to operate as a going concern, what orders should this Court issue?

69. Based on the foregoing, I issue the following orders: -

    1. An injunction is hereby issued restraining Dhaval Vinodbhai Soni from transferring or otherwise dealing with 1,000,000 shares in the second defendant/respondent, whether by sale, charge, pledge, securitization, or in any other manner, otherwise than in accordance with any directions issued by the 1st and 2nd plaintiffs, pending the hearing and determination of the suit;

    2. In the interest of justice, the 1st and 2nd plaintiffs/applicants are restored to their offices of directors of the 2nd defendant/respondent, with full privileges; and

    3. Pending the hearing and determination of the main suit, all the decisions regarding the management and operations of the 2nd defendant/respondent shall be made with the unanimous consent of all directors.

70. Costs are at the discretion of the Court. I order that the costs of the application shall be costs in the cause.

71. It is so ordered.

DATED AND SIGNED AT MOMBASA, THIS 11TH DAY OF DECEMBER 2025. DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS.

GREGORY MUTAI

JUDGE

In the presence of:-

Mr Khagram, for the Plaintiffs/Applicants;

Mr Oonge, for the Defendants/Respondents;

Mary - Court Assistant.