

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND TAX DIVISION
HCCOMM NO. E781 OF 2025 (O.S)

**IN THE MATTER OF AN APPLICATION BY THE APPLICANT’S DIRECTOR
MICHAEL MWASA KILONZO UNDER ORDER 37 OF THE CIVIL
PROCEDURE RULES, 2010**

BETWEEN

**MOM VISION PRODECA (MVP)
FOUNDATIONS.....APPLICANT**

-VERSUS-

**PRINCE MOUSTAPHA NDAIYE.....
RESPONDENT**

KENYA COMMERCIAL BANK LIMITED.....INTERESTED PARTY

RULING

Introduction

1. Before this Court is an Originating Summons dated 26th November 2025. The Applicant, Mom Vision Prodeca (MVP) Foundations, seeks a declaration that the Respondent, Prince Moustapha Ndaiye, was removed as an authorized signatory for its bank accounts (USD 1309615497 and KES 1309615411) held at Kenya Commercial Bank Limited (Moi Avenue Branch). Further, the Applicant prays for an order directing the Head of Risk and Compliance at the said bank to rectify the register of signatories by expunging the Respondent’s mandate.
2. The Application is supported by the affidavit of **Michael Mwas**
Kilonzo, a Director of the Applicant. The Applicant’s primary

contention is that on 19th November 2025, the Board of Directors passed a valid resolution removing the Respondent as a signatory. This decision was prompted by the Respondent's alleged refusal to provide notarized identification documents required by the bank, which has resulted in a "complete deadlock" in the operation of the accounts.

3. The Applicant further alleges that the Respondent, who resides outside Kenya, has engaged in continuous acts of obstruction and sabotage, frustrating the foundation's ability to utilize donor funds. It is argued that such conduct amounts to mismanagement and is prejudicial to the interests of the Company under Sections 143 and 780 of the Companies Act, 2015.
4. Despite being duly served with the Application and the Court's directions, the Respondent did not file a Replying Affidavit or any grounds of opposition. Consequently, the Applicant's evidence remains uncontroverted.

Analysis and Determination

5. Having considered the pleadings and the written submissions filed by the Applicant, I find that the sole issue for determination is whether the application is merited.
6. It is a well-settled principle in law, as cited by the Applicant in *Trust Bank Limited v Paramount Universal Bank Limited & 2 Others [2009] eKLR*, that where allegations are not denied, they are deemed admitted.
7. It is trite law that where a party fails to respond to pleadings, the evidence placed before court stands uncontroverted and the allegations are deemed admitted. However, a claimant is always under

a duty to discharge the burden of proof. In **Gichinga Kibutha v Caroline Nduku [2018] eKLR**, the Court stated that:

“It is not automatic that in instances where the evidence is not controverted, the claimant’s claim shall have his way in Court. He must discharge the burden of proof. He must prove his case, however much the opponent has not made a presence in the contest.”

8. Regarding the removal of the signatory, the Court notes that under Section 143 of the Companies Act 2015, directors are responsible for the management of the company's business. The appointment or removal of a bank signatory is an administrative and operational function of the Board. As held in *Ghelani Metals Ltd & 3 Others v Elesh Ghelani Natwarlal & Another [2017] eKLR*, a Board may withdraw operational responsibilities while preserving a person’s directorship.
9. The Court is alert of the rule in *Foss v Harbottle (1843)*, which generally prevents judicial interference in internal company matters that can be ratified by a majority. However, the Applicant in this case is not asking the Court to make a management decision, but rather to give legal effect to a resolution already passed by the Board to prevent operational paralysis and the loss of donor funds.
10. In the present case, the Applicant has demonstrated that the Respondent's continued status as a signatory, coupled with his refusal to comply with mandatory banking protocols, is prejudicial to the foundation. To meet the ends of justice and ensure the continuity of the Applicant’s operations, the Court finds the application meritorious.
11. Accordingly, I make the following orders:

- i. A Declaration is hereby issued that the Respondent was removed and ceased to be an authorized signatory of the Applicant's Bank Accounts (USD 1309615497 and KES 1309615411) held at Kenya Commercial Bank Limited (Moi Avenue Branch) via the resolution dated 19th November 2025.
 - ii. An Order is hereby issued directing the Head of Risk and Compliance, Kenya Commercial Bank Limited, to rectify the register of signatories for the said accounts by deleting and cancelling the mandate of the Respondent.
 - iii. Costs of this application, which is hereby assessed at Kshs.100,000/= is awarded to the Applicant against the Respondent
12. It is so ordered.

SIGNED, DATED, and DELIVERED IN VIRTUAL COURT THIS

15TH JANUARY 2026



**ADO MOSES
JUDGE**

In the presence of: -

C/A - Moses

Ms. Ofwa.....for the Applicant.

N/A..... for the Respondent.

Ms. Nambiringi h/b for Mbari.....for the Interested Party.