



**Tianjin Hongfengyuan Trading Co. Ltd v Weibo & 2 others (Civil Appeal
(Application) E179 of 2025) [2026] KECA 79 (KLR) (30 January 2026) (Reasons)**

Neutral citation: [2026] KECA 79 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CIVIL APPEAL (APPLICATION) E179 OF 2025
MA WARSAME, JM MATIVO & PM GACHOKA, JJA
JANUARY 30, 2026**

BETWEEN

TIANJIN HONGFENGYUAN TRADING CO. LTD APPLICANT

AND

WANG WEIBO 1ST RESPONDENT

HUNAN SHAUNGFENG BAOGUANJIN MINING CO. LTD 2ND RESPONDENT

BAO GOLD HILL KENYA LIMIT 3RD RESPONDENT

*(An application for injunction pending the hearing and determination of an
appeal from the ruling and order of the High Court of Kenya at Narok (C.
Kariuki, J) delivered on 15th August 2025 in Commercial Case No. E007 of 2025)*

REASONS

1. The applicant approached this Court through a Notice of Motion dated 6th November 2025 seeking the following orders:
 1. ... Spent;
 2. ...Spent;
 3. That pending the hearing and determination of this appeal an injunction do issue restraining Wang Weibo And Hunan Shuangfeng Baoguanjin Mining CO. LTD from conducting business and/or mining operations at the Lolgorian Mining site in Narok County in the name of the 3rd Respondent.
2. The application came up for hearing on 15th January 2026.
Upon hearing the parties, we dismissed the application with costs under rule 34(1) of the rules of this Court. We now give reasons for the dismissal of the application.



3. To contextualize the crux of the appeal, giving rise to the application that was dismissed, we shall give the background, albeit in a summary way. The applicant filed in the Narok High Court, Commercial Case No. E007 of 2025 a derivative action against the respondents. On 15th August 2025 (C. Kariuki, J.), in his ruling, upheld a preliminary objection, filed by the respondents, and dismissed the applicant’s application for leave to continue with a derivative action. The gist of the preliminary objection was the choice of forum of the dispute resolution. The court held the forum for dispute resolution as per the contract dated 5th February 2020 and signed by the parties, is a competent People’s Court in the People’s Republic of China.
4. Aggrieved by the decision, the applicant filed a notice of appeal on 20th August 2025. The applicant also filed a memorandum of appeal dated 8th October 2025. The memorandum of appeal raised 6 grounds which can be summarized as follows:
 - a. That the Judge erred in law and fact in interpreting the terms of the contract between the parties thereby arriving at a wrong decision that the Kenyan law and its courts do not have jurisdiction;
 - b. That the dispute was not on breach of the contract but on correct representation of the company’s structure and shareholding;
 - c. That the dispute was centered on restructuring of a company registered in Kenya under Kenyan law and therefore the Chinese law is not applicable;
 - d. That the cause of action arose in Kenya hence it is proper to sue in Kenya as there is reciprocity for the enforcement of judgment given in China as China does not accord reciprocal treatment to judgments given in Kenya.
5. This is an application under rule 5 2(b) of the Court of Appeal Rules. The principles applicable have been settled in a number of cases of this Court. This Court held in *David Morton Silversein -vs- Atsango Chesoni* [2002] eKLR that, for an order of stay/injunction to issue, the applicant must first demonstrate that the appeal or intended appeal is arguable, that is, it is not frivolous and secondly, that the appeal or intended appeal, would in the absence of stay, be rendered nugatory.
6. Regarding the sufficiency of the pleaded grounds of appeal to warrant a grant of the stay of the orders sought, this Court in *Yellow Horse Inns Ltd -vs- A.A Kawir Transporters and 4 others* [2014] eKLR observed that an applicant need not show a multiplicity of arguable points as one arguable point would suffice. Neither is the applicant required to show that the arguable point would succeed, as this Court held in *Kenya Commercial Bank Limited -vs- Nicholas Ombija* [2009] eKLR.
7. On arguability, we note that the applicant has raised 6 grounds of appeal. It is trite that even one ground which is arguable and may not necessarily succeed suffices under rule 5 2(b). Looking at the grounds, the main ground raised is on the question of jurisdiction: whether the parties had by consent chosen a dispute resolution mechanism, or put differently, whether the parties had ousted the jurisdiction of the Kenyan courts by consent. We are satisfied that this ground is arguable but we say no more and will leave that issue for determination by the bench that will hear and determine the appeal.
8. Turning to the second limb as to whether the appeal will be rendered nugatory, this Court in *Reliable Bank Ltd -vs- Norlake Investments* [2002] 1 EA defined the word “nugatory” in the following words: “it does not mean only worthless, futile, or invalid, it also means trifling.” The Court also expressed the view that what may render the success of the appeal nugatory must be considered within the circumstances of each case.



9. Looking at the dispute before us the main issue raised in the appeal is whether the applicant should have been granted leave to continue with a derivative action. That is a question of law and we do not see how that can be rendered nugatory if an order of injunction is not granted. Until that question is resolved, that is whether the applicant has capacity to institute a derivative action in Kenya, there can be no basis to grant orders of injunction as prayed by the applicant. Therefore, it is clear that the applicant has not satisfied the second limb and the application accordingly fails.

DATED AND DELIVERED AT NAKURU THIS 30TH DAY OF JANUARY 2026.

M. WARSAME

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JUDGE OF APPEAL

J. MATIVO

.....

JUDGE OF APPEAL

M. GACHOKA C. Arb, FCIArb.

.....

JUDGE OF APPEAL

I certify that this is a True copy of the original

Signed

DEPUTY REGISTRAR

