



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**MILIMANI LAW COURTS**

**ELC NO. E001 OF 2024**

**NYAKU**

**LIMITED.....PLAINTIFF/RESPONDENT**

**VERSUS**

**METROPOLIS**

**STAR**

**LABS**

**KENYA**

**LTD.....1<sup>ST</sup>**

**DEFENDANT/RESPONDENT**

**SHRIKESH**

**GHEEWALA.....2<sup>ND</sup>**

**DEFENDANT/RESPONDENT**

**MUKTA**

**CHANDRAKANT**

**GHEEWALA.....**

**.....3<sup>RD</sup> DEFENDANT/RESPONDENT**

**AND**

**ELESHKUMAR CHANDRAKANT GHEEWA.....INTERESTED**

**PARTY/RESPONDENT**

**PRAFULLA**

**ELESHKUMAR**

**GHEEWALA.....2<sup>ND</sup>**

**INTERESTED PARTY/RESPONDENT**

## **RULING**

1. The Plaintiff instituted this suit against the 1<sup>st</sup> Defendant seeking declarations inter alia that the 1<sup>st</sup> Defendants tenancy is illegal and amounts to trespass. The Plaintiff also sought injunctive reliefs restraining the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants from making unilateral decisions concerning the suit property.
2. The 3<sup>rd</sup> Defendant who avers that she is a director of the company initially challenged the competence of the suit upon the grounds that no board resolution had been filed authorizing the appointment of counsel for the Plaintiff and the institution of the suit. The court declined to strike out the suit at interlocutory stage noting that the board resolution could always be filed later.
3. Subsequently as parties prepared for hearing the 3<sup>rd</sup> Defendant filed the instant application seeking various orders.

4. The Plaintiff opposed the application on ground that the validity of the impugned AGM had already been determined by the Commercial Division of the High Court. Crucially it was the Plaintiffs contention that this court has no jurisdiction to delve into the corporate issues raised. Furthermore it was the contention of the Plaintiff that the 2<sup>nd</sup> Defendant has not even filed a defence to the matter.
5. The 2<sup>nd</sup> Defendant in a further affidavit confirmed the existence of multiple suits in the Commercial Division, the Chief Magistrates Court and the Succession Court. She then sought to withdraw the prayers challenging the appointment of Ike and Co Advocates on the grounds there is an upcoming Ruling on the issue on 27<sup>th</sup> February 2026.
6. Having considered the submissions on the issue, the twin issues for determination are whether leave should be granted to amend the defence and secondly whether the court has jurisdiction to interrogate the validity of the resolutions of the company and the AGM resolutions.

**7. Article 162 (2) (b) of the constitution** provides that Parliament shall establish a court with the status of the High Court to hear and determine disputes relating to the environment and the use and occupation of, and title to, land. Pursuant to this Constitutional provision parliament enacted the Environment and Land Court Act, 2011 which under Section 13 sets out the jurisdiction of the court thus;

**8. 13“(1) The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2)(b) of the Constitution and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.**

**(2) In exercise of its jurisdiction under Article 162(2) (b) of the Constitution, the Court shall have power to hear and determine disputes?**

**(a) relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;**

**(b) relating to compulsory acquisition of land;**

***(c) relating to land administration and management;***

***(d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and***

***(e) any other dispute relating to environment and land.***

***(3) Nothing in this Act shall preclude the Court from hearing and determining applications for redress of a denial, violation or infringement of, or threat to, rights or fundamental freedom relating to a clean and healthy environment under Articles 42, 69 and 70 of the Constitution.***

***9.(4) In addition to the matters referred to in subsections (1) and (2), the Court shall exercise appellate jurisdiction over the decisions of subordinate courts or local tribunals in respect of matters falling within the jurisdiction of the Court.***

10. The court has no jurisdiction to delve into matters of directorship, validity of board or stakeholder resolutions,

corporate authority and internal company governance. These matters fall squarely within the domain of the Commercial Division of the High Court which is already seized of the matters.

11. Looking at the affidavits by all the parties who filed them, it is evident that all the parties were in a way or another calling upon the court to make a determination which would require it to venture into issues before the Commercial Division.

12. Consequently it is now evident that the court cannot proceed to determine the land and tenancy issues until the Commercial Division settles the outstanding issues of capacity. As such I find that it is imperative that the court stays the proceedings to await the determination of the matter in the Commercial Division.

13. However there is the application to amend the Defence.

**Order 8 Rule 3 of the Civil Procedure Rules** provides for amendment of pleadings with leave of court as follows: -

**(1) Subject to Order 1, rules 9 and 10, Order 24, rules 3, 4, 5 and 6 and the following provisions of this rule, the court may at any stage of the proceedings, on such terms as to costs or otherwise as may be just and in such manner as it may direct, allow any party to amend his pleadings.**

Further, **Order 8, rule 5** gives the court the general power to amend.

**5. (1) For the purpose of determining the real question in controversy between the parties, or of correcting any defect or error in any proceedings, the court may either of its own motion or on the application of any party order any document to be amended in such manner as it directs and on such terms as to costs or otherwise as are just.**

14. In the interests of expeditious determination of the matter if an and when the matter shall proceed for hearing, the court deems it fit to grant leave to amend the defence

with the caveat that the amendments should not touch on the issues which are already before the Commercial Court for determination.

15. Ultimately the court issues the following orders;
- a. The Defendant is granted leave to amend their Defence. Amended Defence to be filed within 21 days. Corresponding leave is granted to the other parties to amend their pleadings.**
  - b. The proceedings are hereby stayed pending the conclusion of HCC COMMERCIAL E075 of 2024.**

**Dated, Signed and Delivered virtually at Kajiado this 12<sup>th</sup> day of February, 2026.**

**JUDY OMANGE  
JUDGE.**

**IN THE PRESENCE OF:**

Mr. Nyongesa for Mr. Kimamo for the Plaintiff.

Mr. Owiti for the Defendant.

Court Assistant - Peter.