

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MALINDI
CIVIL SUIT NO. E006 OF 2023

**RUGGERO
SCIOMMERI.....PLAINTIFF**

VERSUS

**TASMAC LIMITED..... 1ST
DEFENDANT**
**MOHAMED ABDI MOHAMED..... 2ND
DEFENDANT**
**REGISTRAR OF COMPANIES..... 3RD
DEFENDANT**
NASSAU LIMITED..... 4TH DEFENDANT
HANNINGTON BARAZA WANJALA..... 5TH DEFENDANT

JUDGMENT

1. The Plaintiff filed this suit against the Defendant seeking the following orders:
 - a) *A declaration that the transfer of 480 shares representing 48% Stake in Nasau Limited from the Plaintiff to the 1st Defendant was fraudulent, illegal and void.*
 - b) *An order of mandatory injunction compelling the Registrar of Companies to immediately cancel the purported transfer of the 480 shares in the name of the 1st Defendant and reinstate the same in the name of the Plaintiff forthwith.*
 - c) *A declaration that the appointment of the 2nd Defendant as the director or agent of Nassau Limited is irregular, illegal, null and void.*
 - d) *An order cancelling and or quashing the appointment of the 2nd Defendant as a director of Nassau Limited.*
 - e) *A declaration that the appointment of the 5th Defendant as the Company Secretary of Nassau Limited is irregular, illegal, null and void.*
 - f) *An order cancelling and or quashing the appointment of the 5th Defendant as the Company Secretary of Nassau Limited.*
 - g) *A permanent order of injunction restraining the Defendants, their agents from dealing with the 4th Defendant's properties namely all that parcel of Land situated in the Malindi Municipality known as Land Portion No.603 (Original*

6/22) Title Number LT, 36, FOLIO 202A, FILE 4247 containing by measurement Two Decimal Nine one (2.91) acres or thereabout and Land Portion Number 12069 Malindi measuring approximately Two decimal Naught Five Nine (2.059) hectares or thereabout comprised in a Grant registered at the Registry of Titles at Mombasa as Number C.R 41261 and any other assets of the 4th Defendant.

- h) General and punitive damages.**
- i) Costs of the suit on reimbursement basis.**
- j) Any other further order as the court may deem it fit to grant.**

2. The Plaintiff's case is that he has been a director and shareholder of the 4th Defendant. He acquired 480 shares representing a 48% stake from the 1st Defendant, pursuant to an agreement dated 27.11.14 for the sum of € 450,000. However, that after transferring the shares to the Plaintiff, the 1st Defendant unsuccessfully commenced numerous legal proceedings, including HCCC No. 17 of 2019 (OS) and Criminal Case No. 981 of 2018, seeking nullification of the transfer of the said shares. Court decisions were made finally settling the issue. In April 2023, the Plaintiff discovered that the 1st Defendant, the 2nd Defendant and the 5th Defendant in connivance with the 3rd Defendant unlawfully and illegally transferred his shares using forged documents. The Plaintiff was illegally removed as a director of the 4th Defendant while the 2nd Defendant was illegally appointed director and the 5th Defendant was appointed its company secretary, using documents purportedly signed by the Plaintiff. Further, that the purported transfer was done without consideration or notice to the board of directors as prescribed in the memorandum and articles of association of Nassau. The Plaintiff averred that despite request, the Registrar has frustrated the Plaintiff and refused to supply him with the complete documents used in the illegal transfer and appointments. The Plaintiff urged that judgment be entered for him against the Defendants.

3. Interlocutory judgment was entered against the 1st, 2nd, 3rd and 5th Defendants on 6.10.23 for failure to enter appearance or file a defence within the prescribed period. The 1st and 2nd defendants filed an application dated 14.11.23 and amended on 18.7.24 seeking the setting aside of the said judgment, which application was dismissed *vide* a ruling dated 9.10.24.

4. On its part, the 4th Defendant filed a notice of admission of the Plaintiff's claim pursuant to Order 13 Rule 1 of the Civil Procedure Rules which provides:

Any party to a suit may give notice by his pleading, or otherwise in writing, that he admits the truth of the whole or part of the case of any other party.

5. Thereafter the matter proceeded to formal proof against the 1st, 2nd, 3rd and 5th Defendants. The Plaintiff in his testimony gave vent to his averments in his Complaint and witness statement. He stated that he discovered the minutes of a meeting dated 18.4.23 in which it was indicated that he had transferred his 480 shares in the 4th Defendant to the 1st Defendant. He asserted that though his name and signature appear on the document, he did not sign the same. Further that the CR12 shows that the 5th Defendant is the company secretary and that the 2nd Defendant is a director of the 4th defendant. He urged the Court to revoke the fraudulent transfer.
6. The documents exhibited by the Plaintiff show that he purchased 480 shares in the 4th Defendant. There is on record a share transfer form dated 16.11.14 indicating that the 1st Defendant transferred the said shares to the Plaintiff for the sum of € 450,000. There have been several court actions by the 1st Defendant against the Plaintiff seeking nullification of the transfer of the said shares. There is on record a charge sheet in Criminal Case No. 981 of 2018 in which the Plaintiff was charged with conspiracy to defraud the 1st Defendant of the 480 shares, uttering false documents and obtaining registration by false pretence in relation to the said shares. The case was dismissed for failure to establish a *prima facie* case. The 1st Respondent also filed among others OS No. 17 of 2019 seeking *inter alia*, a declaration that it never transferred the said 480 shares to the Plaintiff. This case was also dismissed.
7. The Plaintiff has also exhibited documents showing changes in the shareholding in the 4th Defendant, which he complains of. The exhibited minutes of the 4th Defendant of the meeting held on 18.4.23 indicate that the 1st Defendant transferred 480 shares to the Plaintiff. However, Form CR12 indicates that as at 4.5.23, the 1st Defendant holds 480 shares and the Plaintiff holds none. Further, the minutes of the meeting of 24.3.23 indicate that the 2nd Defendant was appointed director while in the minutes of the meeting of 31.3.23, the 5th Defendant was appointed company secretary of the 4th Defendant. The Plaintiff contends that these changes were done without his authority or consent or any consideration and are thus illegal and void *ab initio*. Further, that his signature in the minutes was forged.
8. The Defendants did not file any statement of defence in response to the complaint. There is no denial of the Plaintiff's claim of the unlawful and illegal transfer of his shares using forged documents. The Defendants have also not refuted the claims that the Plaintiff was illegally removed as a director of the 4th Defendant while the 2nd Defendant was illegally appointed director and the 5th Defendant appointed company secretary of the 4th Defendant. The Plaintiff's claims thus remain uncontroverted.

9. It is trite law that what is not denied is deemed to be admitted. Order 2 Rule 11 of the Civil Procedure Rules provides:

Subject to subrule (4), any allegation of fact made by a party in his pleading shall be deemed to be admitted by the opposing party unless it is traversed by that party in his pleading or a joinder of issue under rule 10 operates as a denial of it.

10. This is restated in **Odger's Principles of Pleadings and Practice in the High Court of Justice 25th Edition**, page 124 as follows:

1. Any allegation of fact unless traversed is admitted.

The pleader must either admit or deny every material allegation of fact in the pleading of his opponent and he must make it absolutely clear which facts he admits and which he denies. To ensure this, Rule 13 provides that any allegation of fact is deemed to be admitted unless traversed and that a traverse may be either by a denial or by a statement of non-admission and either expressly or by necessary implication.

11. Having failed to deny the claim by the Plaintiff, the 1st, 2nd, 3rd and 5th Defendants are deemed to have admitted the same. (See also **Odera t/a AJ Odera & Associates v Machira t/a Machira & Co Advocates [2013] KECA 208 (KLR)**). Accordingly, the Court is satisfied that the Plaintiff's claim is merited.
12. The Plaintiff seeks judgment against the 3rd Defendant, claiming connivance with the 1st Defendant, the 2nd Defendant and the 5th Defendant to unlawfully and illegally transfer his shares using forged documents. However, from the material placed before me, no wrong doing on the part of the 3rd Defendant was proved.
13. The Plaintiff has prayed for both general and punitive damages against the Defendants. In his oral testimony in Court, the Plaintiff did not produce any evidence to quantify his loss. Further, no submissions were made to support the claim for damages and the Court cannot speculate on the same. I do not therefore find any basis for awarding general or punitive damages. In the premises, the Plaintiff's claim in this regard fails.
14. As regards, the prayer for a permanent order of injunction restraining the Defendants and their agents from dealing with the 4th Defendant's properties, namely Land Portion No. 603 (Original 6/22) and Land Portion No. 12069 Malindi and any other assets of the 4th Defendant, no evidence was led to demonstrate any interference with these properties by the Defendants. In any event, such a claim may only be brought by the 4th Defendant. The Plaintiff could only make such prayer in a derivative suit, leave for which he has not obtained.

The claim thus fails. In this regard, I am guided by the holding of Lord Denning MR who in **Moir vs. Wallerstainer [1975] 1 All ER 849** articulated as follows:

It is a fundamental principle of our law that a company is a legal person, with its own corporate identity, separate and distinct from the directors or shareholders, and with its own property rights and interests to which alone it is entitled. If it is defrauded by a wrongdoer, the company itself is the person to sue for the damage.

15. In the end, the Court finds that the suit is merited in part.
16. Pursuant to its notice of admission, judgment is entered against the 4th Defendant as prayed, under Order 13 Rule 2 of the Civil Procedure Rules which provides:

Any party may at any stage of a suit, where admission of facts has been made, either on the pleadings or otherwise, apply to the court for such judgment or order as upon such admissions he may be entitled to, without waiting for the determination of any other question between the parties; and the court may upon such application make such order, or give such judgment, as the court may think just.
17. The Court further makes the following orders:
 1. A declaration hereby issues that the transfer of 480 shares representing 48% stake in Nassau Limited from the Plaintiff to the 1st Defendant was fraudulent, illegal and void.
 2. An order of mandatory injunction issues compelling the Registrar of Companies to immediately cancel the purported transfer of the 480 shares in the name of the 1st Defendant and reinstate the same in the name of the Plaintiff forthwith.
 3. A declaration hereby issues that the appointment of the 2nd Defendant as director or agent of Nassau Limited is irregular, illegal, null and void and the same is hereby quashed.
 4. A declaration hereby issues that the appointment of the 5th Defendant as the Company Secretary of Nassau Limited is irregular, illegal, null and void and the same is hereby quashed.
 5. The Plaintiff shall have costs of the suit which shall be borne by the 1st, 2nd, and 5th Defendants.

DATED, SIGNED and DELIVERED in MALINDI this 13th day of February 2026

M. THANDE

JUDGE