

controlled by the 2nd respondent. It is also averred that some documents, relating to the 1st respondent bore forged signatures of the petitioner and other shareholders.

5. Attached to the motion are documents relating to the incorporation and governance of the 1st respondent, proceedings in Busia MCCRC No. E056 of 2025, transfer documents relating to the 3 landed properties, said to be family property that had been transferred to the 1st respondent, among others.
6. There is a reply, by the 2nd respondent, vide an affidavit of 28th July 2025. He accuses the petitioner of seeking to paralyze the operations of the 1st respondent, and to kill it altogether. He avers that the petitioner has exhibited no interest in the affairs of the 1st respondent, besides having the entity killed. He complains that the petitioner has rushed to court, without first resolving the matter through the dedicated channels, created in the articles of association. He states that the petitioner was given control of some of the assets of the 1st respondent, the 3 landed assets belonging to the 1st respondent, being Busia Municipality/532, 533 and 534, in Busia ELCEPCC No. E001 of 2024. He argues that the petitioner has failed to pay for the land rates and rents for the 3 assets, exposing the same to danger of forfeiture in default. He states that there is no *bona fides* in the bringing of the petition. He complains that the only dispute cited is that between him and the petitioner, which ought not be sufficient ground for liquidating the 1st respondent.
7. The 2nd respondent has attached, to his affidavit, several documents. There is the court order, made in Busia ELCEPCC No. E001 of 2024, by way of an injunction, restraining the 2nd respondent, from dealing with the 3 landed assets, that are registered in the name of the 1st respondent. Notices from the Kenya Revenue Authority and the Busia County Government, relating to audit, for tax purposes, of the income of the 1st respondent; and bills for land rates and land rents for the 3 landed assets, are also attached.
8. The application was initially placed before me, on 8th July 2025, when I gave directions on service, and publication of a notice of the filing of the petition, in a newspaper with national circulation. Directions, on the disposal of the application, were given on 30th July 2025, for canvassing by way of written submissions. Both sides have complied with those directions, by filing their respective written submissions, which I have read and taken note of the arguments made.
9. This ruling is limited to the application, going by the directions of 30th July 2025. The application seeks 2 principal orders, injunctive relief against the 2nd respondent and appointment of an interim liquidator.
10. I will start with the prayer for injunctive relief. The 2nd respondent appears to be the majority shareholder of the 1st respondent, and a director. He has been a shareholder and director from inception. He appears to have had been running the 1st respondent, with the other initial co-shareholder and director, his late father and

the late husband of the petitioner. The prayer seeks that he be stopped from continuing that role. Foundation has to be laid, before such an order is granted.

11. Limited liability companies are incorporated under the Companies Act, which regulates the affairs or governance of such companies. The Companies Act establishes the office of the Registrar of Companies, which oversees the implementation of the provisions of the Companies Act, with respect to the companies registered under that law. A register is kept or maintained of each company, where records of the company are filed. Such records relate to shareholding, directorships, and annual accounts and returns. Such records should provide a guide, to directors, shareholders and third parties, of the state of the company, in terms of governance, liquidity, solvency, among other things. Before anyone can raise a finger, on bad governance or mismanagement of a company, the first port of call ought to be to the Companies Registry and the company's register.
12. The petitioner has not presented, before me, any material, from the Registrar of Companies, which points to bad governance or mismanagement or maladministration of the 1st respondent. She has equally not presented any material, from that office, relating to failure by the 1st respondent to comply with the mandatory requirements of the Companies Act. She has also not exhibited anything that points to correspondence, with the Registrar of Companies, regarding bad governance and mismanagement of the 1st respondent, by the 2nd respondent, and calls for intervention, by that office, for remedial action, before she approached the court. In the absence of that, I do not think that she has made out a case, for the court to stop the 2nd respondent, from engaging in the affairs of the 1st respondent.
13. The petitioner already enjoys court orders, which effectively bar the 2nd respondent from engaging in the affairs of the 1st respondent. The petition herein is anchored on Busia Municipality/532, 533 and 534. These assets initially belonged to the late husband of the petitioner and the father of the 2nd respondent, before they were transferred to the 1st respondent, after its incorporation. On these 3 parcels of land stand commercial premises, which are run by the 1st respondent. The suit, in Busia ELCEPCC No. E001 of 2024, is between the petitioner and the 2nd respondent, over these same assets, that are registered in the name of the 1st respondent. Orders were made, in that suit, restraining the 2nd respondent from selling, leasing out, charging, transferring, creating tenancies, continuing tenancies, renewing tenancies and subleases, trespassing and managing in any way and collecting rents from the said assets. The business of the 1st respondent, from my understanding of these and other proceedings, is to manage the said 3 assets, that are registered in its name. The orders, in Busia ELCEPCC No. E001 of 2024, of 12th November 2024, effectively barred the 2nd respondent from managing or running the affairs of the 1st respondent, to the extent that they are registered in the name of the 1st respondent. To grant another order, over or in addition to that of 12th November 2024, would be duplicious.

14. With respect to liquidation, I would reiterate what I have stated above, that there is nothing, from the Registrar of Companies, which would point to maladministration or mismanagement of the affairs of the 1st respondent by the 2nd respondent. There is no proof, whatsoever, of insolvency. The only pointer, to possible paralysis, could be the orders made in Busia ELCEPCC No. E001 of 2024, which effectively take away the role of the 2nd respondent, in the management of the assets of the 1st respondent, and place them in the hands of the administrator of the estate of the late husband of the petitioner and the father of the 2nd respondent, who was one of the initial directors and shareholders of the 1st respondent. That is not the doing of the 2nd respondent, but of the petitioner.
15. The petitioner has raised the issue of paralysis in the governance of the 1st respondent, by the differences between her and the 2nd respondent. Let me start with stating that that is an issue for determination, at the hearing of the main petition. It forms the substratum of the petition. I would be reluctant, to say much on it, although I have to, for I ought to assess the probability of success of the petition, for the purposes of grant of the interim reliefs sought, by way of injunction, and the appointment of an interim liquidator. To appoint an interim liquidator would be to conclude, at this interlocutory stage, that the 1st respondent ought to be liquidated, before the parties have been heard on the merits of the petition. For such a decision to be made, if it has to, at this preliminary stage, then the probability of success of the petition ought to be considered. I will highlight a few issues.
16. One, the orders made, in Busia ELCEPCC No. E001 of 2024, have already placed the management and administration of the assets of the 1st respondent, that is the 3 landed properties, in the hands of the petitioner, and restrained the 2nd respondent from interference with the same. The role that the interim liquidator would play, in the management of the 1st respondent, is already being played by the petitioner, on the strength of the orders, in Busia ELCEPCC No. E001 of 2024. To appoint an interim liquidator would have the effect of overriding the orders in Busia ELCEPCC No. E001 of 2024. Prudence would militate against that, that is making orders that have the potential of conflicting with other orders, made by other courts in other matters, over the same subject-matter. That is always the danger of initiating too many cases, in different courts, over the same or similar issues.
17. Secondly, I am alive to the fact that there are a number of other suits, apart from the instant one and Busia ELCEPCC No. E001 of 2024, over the same issues. Some are still pending, before me, and before other courts, and I have had occasion to make orders in some of them. It may be premature to get into interim liquidation before some of those suits have run their full course.
18. There are succession proceedings pending, for instance. The petitioner is a director and shareholder, of and in the 1st respondent, on the strength of a grant of representation of her late husband, which appoints her administratrix of his estate, and the shares she holds, in the 1st respondent, accrue to that estate, and she is a shareholder in and a director of the 1st respondent to represent the estate. It could

be premature, for her, to seek liquidation of the 1st respondent, before she has completed administration of the estate she represents in the 1st respondent. The assets, of the 1st respondent, that she seeks to be distributed, in these proceedings, if the distribution is allowed, would be accruing to the estate, to be shared as ordered at confirmation of the grant she holds in the estate of her late husband. That confirmation is yet to happen. In any case, it is classic company law, that the assets of a limited liability company belong to the company, and that, in probate and administration, what is available for distribution, at confirmation of grant, are not the assets of the company, but the shares held by the deceased in the company.

19. There are proceedings, relating to the legality or validity of the transfer of Busia Municipality/532, 533 and 534, from the name of the deceased husband of the petitioner to the 1st respondent. The petitioner argues that those transfers were fraudulent, as they were based on forged documents. There are pending criminal proceedings on that. The criminal trial court dismissed the forgery and uttering of false document charges against the 2nd respondent, relating to those transfers, but the State has appealed, and the appeal pends. The issue, as to whether Busia Municipality/532, 533 and 534 belong to the 1st respondent or to the estate, of the late husband of the petitioner and the father of the 2nd respondent, is still out there. That issue ought to be thrashed out first, before liquidation of the 1st respondent can be contemplated.

20. I believe that what I have said, so far, is enough, to demonstrate that the principal orders, sought in the application, dated 4th July 2025, are not available for granting, at this stage. The said application is hereby dismissed. The costs of the application shall abide the outcome of the main proceedings. Directions, on the disposal of the petition, shall be taken on 15th April 2026. Orders accordingly.

**DELIVERED, VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, ON THIS 23RD
DAY OF FEBRUARY 2026.**

**WM MUSYOKA
JUDGE**

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Wesonga, instructed by Wesonga Masirivai, Advocate for the petitioner.

Mr. Omeri, instructed by Omeri & Associates, Advocates for the 1st respondent.