



**Vasta v Bassi & 3 others (Commercial Case E425 of 2024)
[2026] KEHC 2032 (KLR) (Commercial and Tax) (19 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 2032 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E425 OF 2024
BK NJOROGE, J
FEBRUARY 19, 2026**

BETWEEN

RAVJI KUNVARJI VASTA PLAINTIFF

AND

PUPINDER KAUR BASSI 1ST DEFENDANT

GERT MICHAEL LOOSE 2ND DEFENDANT

PRIME LIVING MANAGEMENT LIMITED 3RD DEFENDANT

AND

MOHAMED IDRIS KHALID INTENDED INTERESTED PARTY

RULING

1. Before the Court are three applications for determination. The Plaintiff's Notices of Motion dated 29th July 2024 and 12th August 2024 and the Defendants' Notice of Motion dated 13th December 2024.
2. In the application dated 29th July 2024, the Plaintiff seeks the following orders:
 - a. Pending the hearing and determination of this suit, the Court to grant the Plaintiff a temporary injunction restraining the Defendants, whether by themselves, their agents, servants, assigns, successors or otherwise, from accessing, withdrawing, transferring, liquidating, paying out, encumbering or in any way whatsoever dealing with the monies held in the 3rd Defendant's accounts or to its credit/call, in accounts numbers 0550278757060, 0550278757084 & 1620385296751, Equity Bank Limited, 03801831821210, 03801831821211 & 03801831821250, I&M Bank Limited, Infrastructure



Bond Issue No. IFB1/2022/014, all in the name of Prime Living Management Limited, the 3rd Defendant, or howsoever and wherever the property of the 3rd Defendant may be held.

- b. The Defendants do provide the Plaintiff with an accurate and comprehensive Statement of Accounts respecting all the affairs of the 3rd Defendant from 26th November, 2018 to-date (being the period of enquiry) and more specifically:
 - i. All income generated by the 3rd Defendant and/ or rightfully payable to the it;
 - ii. All rental income, including accrued interest, received by or on behalf of the 3rd Defendant/ Respondent as a management agent or in the course of its mandate;
 - iii. The schedule of all properties managed by the 3rd Defendant, including those owned by the 1st & 2nd Defendants/ Respondents, the commensurate rental income generated therefrom and the amount of commission on each specific property under the management of the 3rd Defendant.
 - iv. The nature, rationale and legal justification of any disbursements, payments and debits (if any) from the funds realised from any and all dealings touching on the 3rd Defendant;
 - v. The justification for any borrowing or incurring of debts with the requisite Board approval for these;
 - vi. The nature, rationale and legal justification of any decisions (including failure by the 1st & 2nd Defendants to pay the 3rd Defendant for its services) affecting the income of the Plaintiff;
 - vii. The exact amount of money due to the Plaintiff from the Defendants;
 - viii. All interest accrued on the monies due to the Plaintiff from the time of the receipt of the funds to the date of the enquiry; and
 - ix. Any other matters necessary for the provision of a proper, accurate and scientific account as required under Section 628 of the Companies Act.
 - c. The Defendants do pay to the Plaintiff all the monies lawfully due to him within seven (7) days of the Order of the Court.
 - d. A finding be made that the 1st & 2nd Defendants (as Directors and management of the 3rd Defendant Company) have deliberately contravened the provisions of the Companies Act, have acted fraudulently and dishonestly in the conduct of their affairs to the detriment of the Plaintiff and are liable to the sanctions provided under both The Penal Code and The Companies Act, 2015, and a recommendation for their prosecution be issued to the Office of the Director of Public Prosecutions.
 - e. Such further or other orders as are appropriate for the effective administration of justice be issued.
 - f. The costs of this application be met by the Defendants.
3. This application is grounded on the facts on its face and the supporting affidavit of the Plaintiff sworn on 29th July 2024. The Defendants oppose it through the Notice of Preliminary Objection dated 7th August 2024 and the Replying Affidavit sworn on the same date by the 1st Defendant.



4. The Defendants raised an objection in their Notice of Preliminary Objection dated 7th August 2024, on the ground that:
 - i. The entire suit is not sustainable in law as it runs afoul of the provisions of Part XI of the *Companies Act* on derivative actions.
5. The Respondents also filed a Replying Affidavit sworn on 7th August 2024. They stated that only the 3rd Defendant company can properly institute a suit seeking injunctive relief over its bank accounts. That the Plaintiff, being merely a director, does not require Court intervention to obtain company statements or information. That these could be accessed through internal mechanisms such as a meeting or written request. Further, the Plaintiff had already forcibly accessed and confiscated company documents on 15th July 2024, rendering his current prayers unnecessary and unclear. This is including a demand for payment within seven days, which could have been made informally. Additionally, allegations of fraud against the 1st and 2nd Defendants can only be pursued by the Company as any such wrongdoing would be against it and not a shareholder personally. That granting the sought orders would effectively paralyse the Company's operations. Thus, causing grave prejudice to its employees, clients, the Company itself, and third parties
6. The 2nd application, Notice of Motion dated 12th August 2024 by the Plaintiff seeks the following orders:
 - i. Mohamed Idris Khalid, named as an Interested Party herein, be joined in this suit as the 4th Defendant.
 - ii. Further and in addition to Prayer No. 2, a temporary injunction does issue against the Defendants and the Interested Party/ proposed 4th Defendant, their servants, agents, assignees and or nominees, or anyone acting for or on their behalf or at their behest, from convening any meeting, whether special or ordinary, with the intent to remove the Applicant as a Director of the 3rd Defendant, or in any way whatsoever alter the composition of the directorship of the 3rd Defendant, pending the hearing and determination of this application.
 - iii. The pending the hearing and determination of this application, the Respondents, whether by themselves, their agents, servants, assignees or howsoever, be restrained from withdrawing, transferring, liquidating, paying out, encumbering or in any way whatsoever dealing with any and all funds or credits either in the name of the 3rd Defendant or lawfully the property of the said 3rd Defendant, including call deposits and all transferrable instruments.
 - iv. Such further or other orders as are appropriate for the effective and fair administration of justice be issued.
 - v. The costs of this application be provided for.
7. The application is grounded on the facts set out on its face and the Supporting Affidavit of the Plaintiff, sworn on 12th August 2024. It is opposed by the Defendants through the Replying Affidavit of the 1st Defendant, sworn on 21st August 2024.
8. The Respondent, in a Replying Affidavit, contended that he has been wrongly joined in the suit as he has no personal interest in the dispute, explaining that he is merely an employee of Manser Secretarial Services, the appointed Company Secretary, and not its proprietor. He states that his role was purely neutral and administrative, limited to issuing notice of an extraordinary general meeting, attending the meeting, taking minutes, and advising on statutory compliance. That this was without participating in any decision-making or acting in a personal capacity, and that no relief is sought against him.



9. He further argued that his joinder is unnecessary and legally untenable as he is not a necessary or indispensable party. That his inclusion would cause unnecessary costs, delays, and potential conflicts of interest. He denied allegations of partisanship as unfounded while asserting that any decisions on the Applicant's directorship were made solely by the Directors. Thus, he prayed that the application for his joinder be dismissed with costs on a full indemnity basis.
10. Lastly, the Defendant filed the Notice of Motion dated 13th December 2024 seeking the following orders;
 - a. The Court to discharge, vary, and/or set aside the interim orders issued herein on 14th August 2024.
 - b. Pending the Hearing and determination of this Suit, a temporary injunction be issued restraining the Plaintiff by himself, agents, servants, employees or otherwise howsoever from interfering with the 3rd Defendants operations, denying the 1st and 2nd Defendants access to the offices, disconnecting power, water, internet and any utilities or services to the apartments owned and/or managed by the Defendants, harassing, intimidating and threatening the Defendants and/or engaging in activities of whatsoever nature designed to undermine the Defendants operations, reputation, services and businesses.
 - c. Pending the Hearing and determination of this suit, a mandatory injunction be issued compelling the Plaintiff by himself, agents, servants, employees or otherwise howsoever to forthwith return, in their original state and format, all the Defendants items and office stationery confiscated and carted away by the Plaintiff on 15th July 2024, 28th November 2024 and 29th November 2024 during his unlawful raids on the 3rd Defendants offices.
 - d. Pending the hearing and determination of this Suit, a mandatory injunction be issued compelling the Plaintiff and the 2 Defendant in the Counterclaim to apply the Kenya Shillings One Million Two Hundred Thirty-Three Thousand Two Hundred Fifty (Kshs 1,233,250/-) paid them by the 1st Defendant on behalf of ALL the apartment owners, managed by the 3rd Defendant.
 - e. The costs of this application be provided for.
11. The application is supported by the grounds set out on its face and the supporting affidavit sworn on 13th December 2024 by the 1st Defendant. It is opposed by the Plaintiff through the Grounds of Opposition dated 19th December 2024

Issues for determination

12. The Court has perused the applications, rival depositions and submissions of the parties. The Defendants have raised a preliminary issue that impeaches the competence of the suit and the Court's jurisdiction. Therefore, that's the main issue for determination before determining the merits of the other applications, if at all. The Court says so noting that if the Notice of Preliminary Objection is sustained, then the suit by the Plaintiff falls by the wayside. However, if the Preliminary Objection fails, then it would be dismissed and pave way for the hearing of the pending applications. It is therefore always proper that when an issue of jurisdiction is raised, the Court should deal with it at the earliest. It is only after the Court is settled on the issue of jurisdiction that it can proceed to hear the dispute. Therefore, in as much as Counsel submitted on all the three applications, this Court will first proceed to determine the issue of jurisdiction first. The Court frames the single issue as follows;



a. Whether the Court has jurisdiction to entertain the suit as no leave was filed to commence a derivative action.

Analysis

13. The Defendants raised an objection in their Notice of Preliminary Objection on the ground that the entire suit is not sustainable in law as it runs afoul of the provisions of Part XI of the *Companies Act* on derivative actions.
14. Did the Plaintiff have the locus standi to file the suit. As stated, the Defendants averred and submitted that the Plaintiff has no locus in the suit. This is because the suit can only be sustained as a derivative action. The reason being that the Plaintiff's claim lies against the directors of the Company, who ought to have been the proper Plaintiff in the matter.
15. On his part, the Plaintiff submitted that Part XXIX of the *Companies Act* empowers him to bring these proceedings in the manner that he has. That the powers of the Court are unlimited in the proper exercise of its discretion. From the Plaintiff, the Plaintiff stated that his action is for injunctive relief and taking accounts in respect of the affairs of the Company. That he is entitled under Section 780 to seek the protection of the Court under Section 782 and likewise the reliefs under Section 1004 of the *Companies Act*.
16. Under the above-mentioned provisions, the Court agrees with the Plaintiff that one does not require leave from the Court to file an application therein as compared to an application for permission to continue a derivative claim under Section 239 of the Act.
17. Section 238 interprets a "derivative claim" as

‘...proceedings by a member of a company—(a)in respect of a cause of action vested in the company; and(b)seeking relief on behalf of the company and that ‘A derivative claim under this Part may be brought only in respect of a cause of action arising from an actual or proposed act or omission involving negligence, default, breach of duty or breach of trust by a director of the company.’
18. It is undisputed that in the Plaintiff and in addition thereto, the Plaintiff is seeking protection for himself and also seeking accounts, as a member of the Company. It is also notable that the Plaintiff also accuses the Defendants of embezzling Company funds and occasioning the Company loss and damage. He also seeks injunctive relief in respect of the Company's accounts. The orders relating to the funds are directed against the 3rd Defendant which is the Company.
19. It is trite law that derivative suits are meant to protect the legal interests of the company. This is by seeking to redress a wrong done to the company, often against an insider (whether a director, majority shareholder or other officer) or a third party, whose action has allegedly injured the corporation. A derivative action is therefore an exception to the rule established under *Foss V Harbottle* (1843) 2 Hare 462. This is to the effect that a corporation should sue in its own name and in its corporate character or in the name of the person appointed by the law to be its representative.
20. This can only be done through a derivative action which a party must seek leave and permission of the Court to either file or continue with such a suit. This position was reiterated by the Court of Appeal in



Amin Akberali Manji, Hemanth Kumar & Musikland Millenium Limited v Altaf Abdulrasul Dadani & Musikland Limited (Under Receivership) [2015] KECA 356 (KLR) as follows:

‘Leave of court shall be obtained before filing a derivative suit, but may be obtained to continue with the suit once filed.... It is our view that at whatever stage leave is sought, the crucial requirement is for the applicant to establish a prima facie case demonstrating that he has locus standi to institute such action falls within any of the exceptions to the rule of Foss vs Harbottle.’

21. Since the Plaintiff is seeking relief on behalf of the Company and against the Company’s directors for inter alia default, breach of duty and breach of trust, he ought to have demonstrated that he had locus standi to institute the present suit as a derivative claim. As he has not demonstrated the same, the Court finds that he has no locus standi to institute this suit or seek reliefs on behalf of the Company. The Court having looked at the Plaintiff’s claim in totality is of the view that on the face of it, it is a derivative claim. Leave of the Court ought to have been sought before a suit of this nature was presented to Court.
22. A Preliminary Objection has been defined by the Courts in a number of cases. In the locus classicus case of Mukisa Biscuits Manufacturing Co Ltd vs West end Distribution Ltd [1969] E.A.696 a Preliminary Objection was defined as: -

“A point of law which has been pleaded, or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration ... a preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion”

23. Also, in the case of Oraro .V. Mbaja 2005 eKLR, the Court described a Preliminary Objection as follows: -

“I think the principle is abundantly clear. A “Preliminary Objection” correctly understood, is now well identified as, and declared to be, a point of law which must not be blurred with factual details liable to be contested and in any event, to be proved through the process of evidence. An assertion which claims to be a Preliminary Objection and yet it bears factual aspects calling for proof, or seeks to adduce evidence for it’s authentication is not, as a matter of legal principle, a true Preliminary Objection which the Court should allow to proceed.”

24. This Court is persuaded that the preliminary Objection as filed raises a pure point of law for determination by this Court in limine.
25. Once the Court is persuaded that it lacks jurisdiction, for want of leave to commence derivative proceedings, it downs it tools. The Court is bound to follow the decision of the Court of Appeal in Owners of the Motor Vessel ‘Lillian’ (S) v Caltex Oil (Kenya) Ltd [1989] KLR 1, where the Court held that; -

“Jurisdiction is everything. Without it, a Court has no power to make one more step. Where a Court had no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A Court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction...”



26. The Defendants' Notice of Preliminary Objection dated 7th August 2024 has merit and ought to be allowed.
27. On the issue of costs, the same follow the event unless the Court for very good reasons states otherwise. Owing to the unique relationship of the parties as shareholders of the same company, the Court directs that that each party to bear its/his and her costs arising out the suit that is now struck out.

Determination

28. The Defendant's Notice of Preliminary Objection dated 7th August 2024 is sustained.
29. The Plaintiff's suit is hereby struck out for being a derivative suit which was filed without leave first had and obtained.
30. Each party to bear its/his/her own costs.
31. It is so ordered.

DATED, SIGNED AND DELIVERED AT MILIMANI THIS 19TH DAY OF FEBRUARY, 2026.

NJOROGE BENJAMIN K.

JUDGE

In the presence of:

Mr. Mutuku for the Plaintiff/Applicant.

Mr. Oyugi for Defendants/ Respondents.

Peter Wabwire - Court Assistant.

