

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND TAX DIVISION
HCCOMM NO. E071 OF 2024

IN THE MATTER OF HOUSING SCHEMES LIMITED

-AND-

IN THE MATTER OF AN APPLICATION BY A MEMBER OF THE
COMPANY FOR PROTECTION AGAINST UNFAIR PREJUDICE

-AND-

IN THE MATTER OF CONTRAVENTION OF THE COMPANIES ACT NO. 17
OF 2015

-AND-

IN THE MATTER OF CONTRAVENTION OF THE ARTICLES OF
ASSOCIATION OF HOUSING SCHEMES LIMITED

-BETWEEN-

MUKTA CHANDRAKANT GHEEWALA (Suing as the Executrix of the Estate
of Chandrakant Shamjibhai Gheewala).....1ST
PLAINTIFF

SHRIKESH GHEEWALA.....2ND PLAINTIFF

MAMTA GHEEWALA.....3RD PLAINTIFF

-VERSUS-

ELESHKUMAR CHANDRAKANT
GHEEWALA.....1ST DEFENDANT
HOUSING SCHEMES LIMITED.....2ND INTENDED DEFENDANT

RULING NO. 4

1. The intended 2nd defendant/applicant filed a Chamber Summons application dated 23rd May 2025 pursuant to the provisions of Order 1 Rule 10(2), Order 45

Rule 1 & Order 51 Rule 1 of the Civil Procedure Rules, 2010, Sections 1A, 1B, 3A & 80 of the Civil Procedure Act, Articles 47(1) & (2), 48, 50(1) & (2) & 159 (2) of the Constitution of Kenya and all enabling provisions of law. The 2nd intended defendant prays for orders that this Honourable Court be pleased to join Housing Schemes Limited as the 2nd defendant in this suit. The intended 2nd defendant also prays for this Court to grant leave to the firm of Messrs. Tabut & Tabut Advocates to come on record for the 2nd intended defendant, and also prays for this Court to interpret its Ruling, and the consequential Orders made on 28th March 2025.

2. The application is premised on the grounds on the face of the Motion, and it is supported by an affidavit sworn on the same day by Mr. Eleshkumar Chandrakant Gheewala, a Director of the 2nd intended defendant. Mr. Eleshkumar averred that the intended 2nd defendant was not joined to the proceedings in this suit, thereby precluding it from participating in the suit despite being a separate and distinct legal entity capable of suing and being sued. He contended that the plaintiffs deliberately excluded the company from the proceedings in this suit, effectively condemning it unheard, and in violation of its constitutional right to a fair hearing under Article 50(1) & (2) of the Constitution. He asserted that it is just and fair for the intended 2nd defendant to be joined to this suit and for it to be allowed to participate in these proceedings through its Advocates.
3. Mr. Eleshkumar deposed that this Honourable Court delivered a Ruling on 28th March 2025, which adversely affected the daily affairs and management of the intended 2nd defendant. He explained that he is both a Director and Shareholder of the said company, whereas the 2nd plaintiff is a Director but not a Shareholder, and that the two of them hold diametrically opposing views on the

interpretation of the said Ruling. He stated that as a result, the intended 2nd defendant has been rendered vulnerable and its operations impractical due to the absence of oversight and collaboration between its only two Board members. Mr. Eleshkumar outlined several governance and operational challenges facing the company, including the absence of an audit since 2008, the need to appoint an Auditor, and an unresolved discrepancy of approximately Kshs.30,000,000/=.

4. He averred that the 2nd plaintiff has been collecting rent from the company's property on Desai Road without rendering proper accounts or opening a company account for rent collection, and that he has failed to provide updates on the renewal or extension of the lease for the same property, thereby exposing the company to the risk of losing the lease. He further averred that previous efforts to convene Board meetings, file statutory documents, and ensure compliance have been unsuccessful, exposing the company to potential unauthorized operations. Mr. Eleshkumar also raised concerns regarding the 2nd plaintiff's alleged intermeddling with the Estate of the late Chandrakant Shamjibhai Gheewala by transferring shares in Unique Holdings Limited without a confirmed Grant, which he contended, creates apprehension regarding the management of the intended 2nd defendant.
5. In opposition to the application herein, the plaintiffs filed a replying affidavit sworn on 15th September 2025 by Mr. Shrikesh Gheewala, the 2nd plaintiff herein and a Director of the intended 2nd defendant. Mr. Shrikesh averred that the instant application is incurably defective and ought to be struck out for having been filed without a company resolution authorizing such action. He argued that the prayer seeking joinder of Housing Schemes Limited as the 2nd defendant is defective for want of a company resolution and for failure to meet

the legal threshold for joinder, under Order 1 Rule 10(2) of the Civil Procedure Rules.

6. He further averred that the prayer seeking to have Messrs. Tabut & Tabut Advocates come on record is premature and undeserving, as the said firm has not been appointed through a duly passed company resolution as required by law, and that the said firm has allegedly been purporting to act for the company and other family companies without proper authorization, prompting steps to have the appointment of the said Advocates challenged. Mr. Shrikesh stated that the prayer seeking interpretation of the Court's Ruling and consequential Orders made on 28th March 2025 is misconceived and without merit. He deposed that the 1st defendant can engage the plaintiffs directly on matters relating to the company.
7. In a rejoinder, the intended 2nd defendant filed a further affidavit sworn on 30th September 2025 by Mr. Eleshkumar Chandrakant Gheewala, a Director of the 2nd intended defendant. Mr. Eleshkumar deposed that since 2024, the company has been unable to hold Board meetings, and any attempts to convene AGMs, OGMs, or SGMs have been quashed by the plaintiffs, making it impossible for the intended 2nd defendant to pass resolutions and necessitating the intervention of this Honourable Court. He averred that the provisions of Order 1 Rule 10(2) of the Civil Procedure Rules are inapplicable, as they relate to an affidavit of service upon non-attendance of a party and bear no nexus to the application herein.
8. Mr. Eleshkumar contended that the plaintiffs have not advanced any valid objection to the non-joinder of the intended 2nd defendant. He stated that the plaintiffs' characterization of the issues is misleading and emphasized that the stalemate outlined in his supporting affidavit has persisted for years and has

been exacerbated by this Court's Ruling. Mr. Eleshkumar maintained that a substantive interpretation of the Ruling of 28th March 2025 will not prejudice any party, but will instead serve the best interests of the company.

9. The instant application was canvassed by way of written submissions. The 2nd intended defendant's submissions were filed on 4th September 2025 & 30th September 2025 by the law firm of Tabut & Tabut Advocates, while the plaintiffs' submissions were filed by the law firm of Kimamo Kuria Advocates on 30th September 2025.
10. Ms Tabut, learned Counsel for the intended 2nd defendant relied on the case of **Gateway Insurance Company Limited now Sanlam General Insurance Limited v Joseph; Ngethe & another (Intended Defendant) (Suing as the administrators of the Estate of the Late Peter Kagwima Kimani)** [2024] KEHC 61 (KLR), and submitted that the intended 2nd defendant was not joined to these proceedings despite being a separate legal entity capable of suing and being sued, yet the substratum of the main suit concerns the monitoring, intervention, and supervision of its affairs. She stated that the plaintiffs excluded the company, thereby denying it an opportunity to be heard, notwithstanding that the Court's Ruling delivered on 28th March 2025 has adversely affected its daily management and operations. Counsel further submitted that the two Directors of the company hold diametrically opposing interpretations of the said Ruling, resulting in a governance stalemate that has rendered the company vulnerable and its affairs impractical to run.
11. She invoked constitutional and statutory provisions, including Articles 48, 50(1) & (2), and 159(2)(d) of the Constitution of Kenya, and emphasized on the right to access to justice, fair hearing, and the primacy of substantive justice over technicalities. She also further relied on the provisions of Sections 1A, 1B, 3A

& 80 of the Civil Procedure Act, which grant the Court inherent powers to make orders necessary for the ends of justice, and to review or interpret its decisions where a party is aggrieved. She argued that the intended 2nd defendant is a necessary and proper party, whose interests have already been affected by the litigation and will continue to be prejudiced if not joined to this suit. Counsel asserted that the intended 2nd defendant's presence is essential for the effective and complete adjudication of all issues in this suit, to prevent multiplicity of proceedings and to ensure practical enforcement of any decree, as the reliefs sought by the plaintiffs flow directly from the company.

12. Mr. Kimamo Kuria, learned Counsel for the plaintiff submitted that the prayer seeking to join Housing Schemes Limited as the 2nd defendant in this suit is defective and incapable of being granted as no company resolution was passed authorizing such joinder. He argued that it is well established in law that a company cannot institute or participate in legal proceedings without a duly passed resolution and that the instant application was brought by Mr. Eleshkumar Chandrakant Gheewala without the consent or knowledge of the 2nd plaintiff, who is also a Director of the company, in contravention of the Court's Ruling delivered on 28th March 2025. He explained that in the said Ruling, the Court held that since Housing Schemes Limited has only two Directors, the defendant could only convene an Annual General Meeting with the consent of the 2nd plaintiff.
13. Counsel contended that the intended 2nd defendant cannot purport to be joined to this suit on the basis of a unilateral application by one Director. To buttress these submissions, Mr. Kimamo Kuria relied on the case of **Kenya Commercial Bank Limited v Stage Coach Management Ltd**

[2014] KEHC 7474 (KLR) and the Ugandan case of **Bugerere Coffee Growers Ltd v Seraduka & another** [1970] EA 147.

14. He submitted that the prayer seeking to have Messrs. Tabut & Tabut Advocates come on record for the intended 2nd defendant company, is premature and undeserving, as the said firm has not been appointed through a valid company resolution. He contended that the said law firm has been purporting to act for the intended 2nd defendant company and related entities without proper authorization.
15. In respect to prayer No. 3 of the instant application, which seeks interpretation of the Court's Ruling of 28th March 2025, Mr. Kimamo Kuria submitted that the prayer is misconceived, as the Ruling is self-explanatory, well-reasoned, and requires no further clarification.
16. In a rejoinder, Ms Tabut relied on the Ruling delivered by this Court on 28th March 2025, particularly, paragraph 82, where the Court affirmed that although Courts are generally reluctant to interfere with company management unless actions are ultra vires, fraudulent, or incapable of rectification by resolution, they retain statutory powers under Section 782 of the Companies Act to grant relief in cases of oppressive conduct and unfair prejudice. She stated that this Court emphasized that that it may regulate the conduct of a company's affairs, restrain or compel certain acts, authorize proceedings in the company's name, restrict alterations to articles, or provide for share purchases.
17. She cited Section 782(4) of the Companies Act and submitted that in the said Ruling, this Court made Orders enabling company business to be conducted through Court supervision, underscoring the Court's interventionist jurisdiction in appropriate circumstances. She contended that since the Ruling of 28th March 2025, the company's affairs have been completely paralyzed, no Board

meetings have been held since 2024 due to internal deadlock and it has become impossible to pass resolutions. Ms Tabut argued that the effect of Sections 782(2)(c) & (4) of the Companies Act necessitates the joinder of the company to proceedings directly affecting it, so as to safeguard its right to participate and be heard.

18. On the issue of interpretation of the Ruling of 28th March 2025, Ms Tabut submitted that given the hardship and paralysis occasioned by the current state of affairs, it is in the best interests of the company for the Court to exercise its inherent powers, as well as its jurisdiction under Order 45 of the Civil Procedure Rules, 2010, to substantively interpret the said Ruling. She maintained that the continued absence of AGMs, Board meetings, and operational cohesion, coupled with the impact of this Court's Orders, demonstrates the necessity of judicial clarification to facilitate proper governance and protect the intended 2nd defendant company's interests.

ANALYSIS AND DETERMINATION.

19. I have considered the instant application, the grounds on the face of it and the affidavits filed in support thereof. I have also considered the replying affidavit by the plaintiffs and the written submissions by Counsel for the parties. The issues that arise for determination are –
- i) Whether the intended 2nd defendant should be joined to these proceedings;**
 - ii) Whether the law firm of Tabut & Tabut Advocates should be granted leave to come on record for the 2nd intended defendant; and**
 - iii) Whether the Court should interpret its Ruling, and the consequential Orders made on 28th March 2025.**

Whether the intended 2nd defendant should be joined to these proceedings.

20. Joinder of parties is provided for under Order 1 Rule 10(2) of the Civil Procedure Rules, 2010, which states that -

The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.

21. In **Civicon Limited v Kivuwatt Limited & 2 others** [2015] KECA 588 (KLR) the Court of Appeal in dealing with an application similar to the instant one, made the following observation -

Again, the power given under the Rules is discretionary which discretion must be exercised judicially. The objective of these Rules is to bring on record all the persons who are parties to the dispute relating to the subject matter, so that the dispute may be determined in their presence at the time without any protraction, inconvenience and to avoid multiplicity of proceedings. Thus, any party reasonably affected by the pending litigation is a necessary and proper party, and should be enjoined... from the foregoing, it may be concluded that being a discretionary order, the court may allow the joinder of a party as a defendant in a suit based on the general principles set out in Order I rule 10 (2) bearing in mind the unique circumstances of each case with regard to the necessity of the party in the determination of the subject

matter of the suit, any direct prejudice likely to be suffered by the party and the practicability of the execution of the order sought in the suit, in the event that the plaintiff should succeed. We may add that all that a party needs to do is to demonstrate sufficient interest in the suit; and the interest need not be the kind that must succeed at the end of the trial.

22. In the case of **Gladys Nduku Nthuki v Letshego Kenya Limited; Mueni Charles Maingi (Intended Plaintiff)** [2022] KEHC 2227 (KLR), Odunga J., (as he then was), in allowing an application similar to the one herein, held as follows—

The relevant tests for determination whether or not to join a party in proceedings were restated by Nambuye, J (as she then was) in the case of Kingori vs. Chege & 3 Others [2002] 2 KLR 243 where the learned Judge stated that the guiding principles when an intending party is to be joined are as follows:

- 1. He must be a necessary party.*
- 2. He must be a proper party.*
- 3. In the case of the defendant there must be a relief flowing from that defendant to the plaintiff.*
- 4. The ultimate order or decree cannot be enforced without his presence in the matter.*
- 5. His presence is necessary to enable the Court effectively and completely adjudicate upon and settle all questions involved in the suit.*

23. It is not disputed that the substratum of this suit concerns the affairs, management and operations of Housing Schemes Limited. The Ruling

delivered on 28th March 2025 directly addressed the governance structure of the intended 2nd defendant company and this Court made Orders affecting how the said company's business is to be conducted. It is further not in contest that the intended 2nd defendant company has only two Directors who hold divergent positions regarding the interpretation and implementation of that Ruling and the alleged governance deadlock has affected its operations.

24. I am therefore persuaded that the outcome of these proceedings directly impacts the intended 2nd defendant company, and that any final orders touching on its management, Shareholder rights, or regulatory compliance would, in practical terms, require implementation by the intended 2nd defendant company itself. In the circumstances, this Court finds that the intended 2nd defendant company's presence in this suit would assist this Court in effectually and completely determining all questions in controversy, and in ensuring enforceability of any decree issued herein.
25. It is however noteworthy that that the plaintiffs oppose the joinder of the intended 2nd defendant company to this suit on the ground that no company resolution was passed authorizing the institution of the application herein or the appointment of Counsel. This Court notes that while it is correct that a company ordinarily acts through resolutions of its Board or Shareholders, the instant application is not one in which the company has instituted substantive proceedings in its own name. To the contrary, it seeks joinder of the intended 2nd defendant company as a party to existing proceedings that directly affect it. Order 1 Rule 10(2) of the Civil Procedure Rules, 2010, expressly empowers Court to add a party either upon or without the application of either party to the suit. This Court is therefore of the considered view that the power to join a necessary party to a suit is ultimately at the Court's discretion, and it is not

dependent solely on a formal company resolution, particularly, where the evidence placed before the Court discloses an apparent deadlock preventing the passing of such a resolution, as is the case herein.

26. Further, Section 782(4) of the Companies Act, provides that –

The company is entitled to be served with a copy of the application and to appear and be heard as respondent at the hearing of the application.

27. The import of the foregoing is that where a relief is sought in relation to company affairs, the company is entitled to be served, to appear and be heard. For this reason, I am persuaded that it would be inimical to the principles of natural justice and Article 50(1) of the Constitution to determine substantive issues concerning a company's management and affairs without affording it an opportunity to participate in the proceedings.

28. Accordingly, in view of the circumstances of this case, where the company has only two Directors who are at loggerheads and where a Ruling delivered on 28th March 2025 has already impacted on its governance framework, insisting on a formal resolution as a precondition to joinder would elevate procedural technicality over substantive justice, contrary to the provisions of Article 159(2) (d) of the Constitution.

29. In the premise, this Court is satisfied that Housing Schemes Limited is a necessary and proper party to these proceedings. This Court further finds that since the interests of the intended 2nd defendant company are directly implicated, its presence is necessary for the effective and complete adjudication of the dispute herein, and its joinder will forestall multiplicity of proceedings and facilitate enforceability of any orders that may ultimately issue.

30. I am therefore persuaded that the intended 2nd defendant company has made out a case to warrant its joinder to these proceedings.

Whether the law firm of Tabut & Tabut Advocates should be granted leave to come on record for the 2nd intended defendant.

31. Given that the Court has found the joinder of Housing Schemes Limited appropriate, it follows that the company requires legal representation to effectively participate in these proceedings.
32. The affidavit of Mr. Eleshkumar demonstrates that Messrs. Tabut & Tabut Advocates are duly instructed to act for the intended 2nd defendant. Further, the plaintiffs have neither alleged nor demonstrated any misconduct and/or conduct unbecoming on the part of the said law firm, for it to be restrained from acting for the intended 2nd defendant. Accordingly, in view of the company's operational paralysis and the urgent need to protect its interests, it is just and equitable to grant the law firm of Tabut & Tabut Advocates leave to come on record for Housing Schemes Limited.

Whether the Court should interpret its Ruling, and the consequential Orders made on 28th March 2025.

33. The circumstances surrounding Housing Schemes Limited, including the governance deadlock and operational paralysis, necessitate judicial interpretation of this Court's Ruling of 28th March 2025, so as to facilitate proper management and decision-making.
34. In the said Ruling, this Court issued temporary Orders to protect six companies being, Housing Schemes Limited, Nyacity Limited, Rural Housing Estates Limited, Cassava Plantations Limited, Santack Enterprises Limited and Associated Securities Limited, while disputes over shareholding and company

control are being resolved. The defendants were restrained from calling or holding any general meetings, including Annual, Ordinary or Special Meetings, without the plaintiffs' consent or further Court orders. This Court also prohibited the defendants from exercising majority shareholder rights or making management decisions that interfere with the operations or affairs of the companies listed above, without the plaintiffs' approval or Court authorization.

35. The above decision arose as a result of the Court's finding that there was a serious dispute regarding the ownership of shares in the said companies, hence any unilateral action by the defendants could cause irreparable harm to the companies and to the rights of the plaintiffs. The interlocutory injunctions granted were therefore meant to preserve the *status quo* of the aforesaid companies, and ensure that the companies continue operating normally until the Court makes a final determination. In the premise, any corporate actions by the defendants that violate the Orders made in the Ruling of 28th March 2025, including holding meetings, transferring shares, or making management decisions, will constitute a breach of the Court Orders.
36. The upshot is that the intended 2nd defendant's application dated 23rd May 2025 is merited, and it is hereby allowed in the following terms -
- i) Housing Schemes Limited is hereby joined as the 2nd defendant in this suit;**
 - ii) The law firm of Messrs. Tabut & Tabut Advocates is granted leave to come on record for the 2nd defendant; and**
 - iii) Costs shall be in the cause.**

It is so ordered.

DATED, SIGNED and DELIVERED at NAIROBI on this 6th day of March 2026. Ruling delivered through Microsoft Teams Online Platform.

NJOKI MWANGI

JUDGE

In the presence of:-

Ms Tabut for the intended 2nd defendant/applicant

Mr. Kimamo Kuria for the plaintiffs/respondents

Mr. Mugisha for the 1st defendant/respondent

Ms B. Wokabi – Court Assistant.