



**Nyaku Limited v Office Suites Developers Limited; Gheewala & another (Interested Parties)
(Environment and Land Case E166 of 2025) [2026] KEELC 1338 (KLR) (9 March 2026) (Ruling)**

Neutral citation: [2026] KEELC 1338 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE E166 OF 2025**

**CG MBOGO, J
MARCH 9, 2026**

BETWEEN

NYAKU LIMITED PLAINTIFF

AND

OFFICE SUITES DEVELOPERS LIMITED DEFENDANT

AND

SHRIKESH GHEEWALA INTERESTED PARTY

MUKTA CHANDRAKANT GHEEWALA INTERESTED PARTY

RULING

1. The plaintiff/applicant filed the notice of motion dated 7th November, 2025 expressed to be brought under Articles 40 and 159(2) of *the Constitution*, Sections 1A, 1B, 3, and 3A of the *Civil Procedure Act*, Order 1 Rules 3, 7, 9, and 10 and Order 51 rule 1 of the Civil Procedure Rules seeking the following orders:-
 1. Spent.
 2. That this honourable court do issue an order compelling the 1st and 2nd interested parties by way of an order of production to supply copies of the current lease agreements and/or current license agreement and/ or current tenancy agreements together with copies of cheques issued and/or statements of accounts and/ or all related documents made between themselves or purportedly on behalf of the plaintiff company and the defendant herein or any other person/ company or corporation, which above said lease/license/tenancy agreements pertain and/or relate to the lease of the suit property known as pent office unit no. 1 (comprising 3318.6 square feet to thereabouts and five (5) parking spaces one on the ground floor of the buildings, two (2) in the basement no. 1 of the building and two (2) others in basement no. 2 under the lease



dated 6th April, 2011 registered in the land titles registry at Nairobi as LR 132200/2 for the building forming part of the estate) situated on the top floor of the building erected on land reference no. 1870/1/575.

3. That in the alternative to the above said orders for production, this honourable court forthwith do issue vacant possession to the plaintiff against any purported occupant of the suit property known as pent office unit no 1 (comprising 3318.6 square feet to thereabouts and five (5) parking spaces one on the ground floor of the buildings, two (2) in the basement no. 1 of the building and two (2) others in basement no. 2 under the lease dated 6th April, 2011 registered in the land titles registry at Nairobi as LR 132200/2 for the building forming part of the estate) situated on the top floor of the building erected on land reference no. 1870/1/575.
 4. That this honourable court do issue an order to the officer commanding station at parklands police station to supervise vacant possession.
 5. That if there be a stay of proceedings in the overall suit being Milimani ELCLC No. E166 of 2025 Nyaku Ltd v Office Suites Developers Ltd pending the hearing and determination of this application.
 6. Costs for this application be provided for in any event.
2. The application is premised on the grounds on its face. It is further supported by the affidavit of Eleshkumar Chandrakant Gheewala, the director and major shareholder of the plaintiff/applicant which was sworn on even date. The plaintiff/applicant deposed that the defendant/respondent in its replying affidavit sworn on 30th April, 2025 and 25th July, 2025 respectively contended that it was not in occupation of the suit property. That prior to the now believed occupation of the defendant/respondent, the interested parties/respondents leased out the suit property to Metropolis Star Labs Kenya Ltd without the express authority of the plaintiff/applicant.
 3. The plaintiff/ applicant deposed that the interested parties/respondents executed the license agreement dated 15th March, 2023 with the said Metropolis Star Labs Kenya Ltd which vacated the suit property after being sued. The plaintiff/ applicant believes that a 3rd party is on the suit property who is said to be the defendant, and that the interested parties are aware of the same having in their custody the documents sought for in the instant application. For this reason, the plaintiff/ applicant deposed that it is crucial for this court to be informed of who is really in possession to ascertain if there is any case of misjoinder or if there is need to join different parties and save judicial time.
 4. The defendant/respondent filed its response to the instant application sworn by Emran Sirmukh Khosla on 21st November, 2025. It was deposed that the plaintiff/applicant has no evidence of the alleged occupation of the suit property and that the instant suit is based on speculation, rumours and unsubstantiated allegations. It was further deposed that its registered address is office space unit no. 7 suit on the 4th floor of the suit premises, and that it is not in occupation of the suit property.
 5. With regard to prayer 3 of the 1st interested party's application dated 5th May, 2025 the defendant/respondent deposed that the plaintiff/applicant has not exhibited such resolution to purport to institute the suit on behalf of the plaintiff company.
 6. The 1st interested party/respondent filed his replying affidavit sworn on 20th November, 2025. He reiterated that there is no resolution by the company to institute this suit on behalf of the company. Further, that in HCCOMM no. E075 of 2024, the court preserved his rights as a director of the plaintiff and confirmed his continued participation in the management of the plaintiff company.



7. He further deposed that Eleshkumar Chandrakank Gheewala has persistently defied the orders of the court by interfering with the management of the company and further preventing him from performing his duties as a director of the plaintiff company. He deposed that the plaintiff/ applicant in seeking the orders, has sued the wrong defendant, with no cause of action against the interested parties/respondents.
8. The 1st interested party deposed that the plaintiff/applicant is on a fishing expedition and owing to the averments by the defendant/respondent, the court should take judicial notice and consider whether the entire suit is sustainable or deserving of the court's indulgence. Moreso, that following the mediation settlement agreement dated 31st July, 2019 which was adopted as an order of the court on 16th October, 2019 the suit property was distributed solely to him, and that the same remains valid and has not been set aside. Further, through Eleshkumar Chandrakant Gheewala, the suit property remains locked, unoccupied and without rental income as he has refused to transfer the suit property to him.
9. The application was canvassed through written submissions. The plaintiff/applicant filed its written submissions dated 16th January, 2026. The defendant/respondent filed its written submissions dated 22nd January, 2026. The 1st interested party/respondent filed his written submissions dated 26th January, 2026.
10. I have carefully analyzed and considered the application, the responses and the written submissions filed by the respective parties. In my view, there are two issues for determination namely:-
 - i. Whether the order for production of documents should issue.
 - ii. The suitability of the plaintiff/applicant to institute the suit based on its replying affidavit sworn on 13th January, 2026 in the absence of the board or company resolution.
11. Section 22(a) of the *Civil Procedure Act* provides that:-

“Power to order discovery and the like subject to such conditions and limitations as may be prescribed, the court may, at any time, either of its own motion or on the application of any party—

(a) make such orders as may be necessary or reasonable in all matters relating to the delivery and answering of interrogatories, the admission of documents and facts, and the discovery, inspection, production, impounding and return of documents or other material objects producible as evidence;”
12. In Halsbury's Laws of England (Volume 85 (2012)) (online edition) at para 655, it states:-

“Any party to a cause or matter may apply to the judge for an order directing any party, other than the proper officer of the crown, to make discovery on oath of any documents which are or have been in his possession or power relating to any matter in question in the cause or matter. Thereupon the judge may make such order as he thinks fit, but discovery may not be ordered unless he is of opinion that it is necessary either for disposing fairly of the cause or for saving costs.”
13. The purpose of discovery if applied correctly, is to assist the parties prepare their case and respond accordingly, which in turn greatly contributes to a fair hearing of the case as enshrined under Article 48 of *the Constitution*. In the instant application, the plaintiff/applicant seeks that the interested parties/respondents be compelled to produce either the lease, license or tenancy agreement said to be entered into with a third party. This comes after the realization that the defendant/respondent through its



replying affidavits sworn on 30th April, 2025, and 25th July, 2025 contended that it is not in occupation of the suit property. Also, in the replying affidavit sworn on 21st November, 2025 the defendant/respondent categorically stated that its registered address is office space unit no. 7 suit on the 4th floor of the suit premises.

14. The plaintiff/applicant argued that it is critical that this information is supplied to ascertain whether there is a case of misjoinder and if it would be necessary to join other parties. First and foremost, it is necessary for the plaintiff/applicant to demonstrate that it sought these documents and was denied access. There is no evidence whatsoever proving the same.

15. In the case of Chase Bank (Kenya) Limited v Cannon Assurance (K) Limited [2019] KECA 313 (KLR) it was held as follows:-

“Generally, it is the duty of a party to argue his case with the best evidence available which can throw light on the controversy at hand. Furthermore, the onus is upon the party in whose custody the best evidence is to produce the document notwithstanding the question of burden.”

16. Secondly, and as I perceive it, the plaintiff/applicant is seeking help from this court to help it identify who is in actual occupation of the suit property while it has failed and ignored to conduct due diligence on its own. Let me state that courts have previously been reluctant to enter into the arena of litigation by helping parties access evidence that would best support their case.

17. In *Mutua & 51 Others v Eveready Batteries (K) Ltd* [2005] KEHC 2925 (KLR), the court while resisting such an application held:-

“In any event, I do not think that the rule of procedure as related to discovery were meant to aid a litigant who does not have evidence to prove his case. Discovery is meant to assist in the fair disposal of suits and to save the costs of litigation.”

18. Similarly in *Ahmed Abdullahi Abdille v Abdille Nur Abdi & Others* 2019 KEELC 2929 (KLR), the court held that:-

“The application which the applicant has filed seeks to prove more evidence in his favour to the prejudice of the respondent. This court is an impartial umpire and cannot assist one of the parties to procure evidence to his advantage. This court is an impartial umpire and cannot exercise its discretion to assist a party to procure evidence to the disadvantage of the opposite party.”

19. From the above authorities, this court takes the view that it is incumbent upon the plaintiff/applicant to gather evidence that best suits its case. This court cannot come to the aid of a party who is indolent. Thus the prayer for production of documents is rejected.

20. Secondly, and while I note that the plaintiff/applicant may not be aware of who is in occupation, the orders of the court are not issued in vain. Therefore, it is impossible to grant vacant possession of the suit property by evicting persons unknown to the court who are not parties in this suit.

21. On the second issue, the 1st interested party/respondent filed the notice of motion dated 5th May, 2025 and prayer 3 of the motion sought the striking out of the suit on grounds that it was in contravention of the orders issued by the high court on 4th April, 2025 in HCCOMM no. E075 of 2024. This prayer was not canvassed in the application which explains why it must be determined. In contending with this argument, the plaintiff/ applicant in its replying affidavit sworn on 13th January, 2026 by Eleshkumar



- Chandrakant Gheewala deposed that following the AGM held on 20th February, 2024 and the extra ordinary meeting held on 17th October, 2024 the 1st interested party/respondent was removed as a director of the plaintiff company. At the time of filing this suit, he did not require consent from him, and as a director, he had to protect the interests of the company which he did through instructing the said advocates.
22. The plaintiff/applicant deposed that the 1st interested party/ respondent has skewed the interpretation of the ruling as there is nothing stopping him from conducting his duties in the company.
23. I have read the ruling in the case of Gheewala (Suing as the Executrix of the Estate of Chandrakant Shamjibhai Gheewala) & 2 others v Gheewala & another [2025] KEHC 4273 (KLR) delivered on 28th March, 2024. The same is in respect to the notice of motion application dated 8th November, 2024 filed by the interested parties and another seeking orders for the suspension of all resolutions from the annual general meeting (AGM) of 20th February, 2024 and the extraordinary general meeting (EGM) of 17th October, 2024 halting the removal of Shrikesh Gheewala as a director of Nyaku limited, and maintain his directorship status, restrain the defendants from interfering with or preventing him from performing his duties.
24. The interested parties/respondents also sought for orders preventing the defendants (plaintiff/ applicant herein) from acting on any resolutions passed at the AGMs/EGMs, prohibit the calling or holding of general or board meetings without the plaintiffs' consent and restrain the majority shareholders of nyaku limited from interfering with the company's management without court approval pending the hearing and determination of the suit.
25. Having considered the application, the high court arrived at the following conclusion:
- “ My finding is that the instant application is merited. As a result, I issue the following orders pending the hearing and determination of the suit amongst the parties herein–
- i. All resolutions from the Extraordinary General Meeting of 17th October, 2024 are hereby suspended;
 - ii. An order is hereby issued halting the removal of the 2nd plaintiff as a Director of Nyaku Limited. His directorship status is hereby maintained;
 - iii. The defendants are hereby restrained from interfering with or preventing the 2nd plaintiff from performing his duties. They are also prevented from acting on any resolutions passed at the Extraordinary General Meeting of 17th October, 2024;
 - iv. The defendants are hereby prohibited from calling or holding any General or Board meetings without the plaintiffs' consent;
 - v. The majority shareholders of Nyaku Limited are hereby restrained from interfering with the company's management without Court approval; and...”
26. Pursuant to the above orders, the 1st interested party/respondent's consent was required prior to the filing of this suit. While the plaintiff/applicant argues that it did not require consent from him as he has been removed, it is equally important to note that this suit was instituted on 2nd April, 2025 as per the plaint, way after the said ruling was delivered which was on 28th March, 2025. This leads me to the conclusion that the plaintiff/applicant knew very well of the orders that were in place and is indeed hellbent on not complying with the same and thereby frustrating the 1st interested party.



27. I am therefore satisfied that the plaintiff/applicant does not have the locus standi to institute the suit. The notice of motion dated 7th November, 2025 is dismissed. The plaint dated 2nd April, 2025 is hereby struck out with costs to the 1st interested party/respondent.

It is so ordered.

DATED, SIGNED & DELIVERED VIRTUALLY THIS 9TH DAY OF MARCH, 2026.

HON. MBOGO C.G.

JUDGE

09/03/2026.

In the presence of:

Ms. Benson Agunga - Court assistant

Mr. Owiti for the Plaintiff/Applicant

Ms. Mukui holding brief for Mr. Kimamo Kuria for the 2nd Interested Party

Ms. Ndung'u holding brief for Mr. Kiptoo for the Defendant

Mr. Kisala holding brief for Mr. Kimathi for the 1st Interested Party

