



Bargoria v Bargoria & 7 others; Bargoria & another (Intended Interested Party) (Civil Suit E475 of 2022) [2026] KEHC 2392 (KLR) (Commercial and Tax) (26 February 2026) (Ruling)

Neutral citation: [2026] KEHC 2392 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL SUIT E475 OF 2022
PM MULWA, J
FEBRUARY 26, 2026**

BETWEEN

VICTOR KIPKEMEI BARGORIA PLAINTIFF

AND

DANIEL KIPTOO BARGORIA 1ST DEFENDANT

SIOKWEI TARITA LIMITED 2ND DEFENDANT

RARITA TROCADERO LIMITED 3RD DEFENDANT

BANK OF AFRICA LIMITED 4TH DEFENDANT

REBECCA JEPKEMBOI BAGORIA 5TH DEFENDANT

DAVID KIMUTA BARGORIA 6TH DEFENDANT

HIGHLAND REGISTRARS 7TH DEFENDANT

BUSINESS REGISTRATION SERVICE 8TH DEFENDANT

AND

WINNIE JEPTUM BARGORIA INTENDED INTERESTED PARTY

SELINA JEMUTAI BARGORIA INTENDED INTERESTED PARTY

RULING

1. The Court is called upon to determine three applications, that is; the Notice of Motion dated 15th April 2024 by the Plaintiff/Applicant, the Notice of Motion dated 27th March 2025 by the intended 1st Interested Party, and the Notice of Motion dated 16th April 2025 by the intended 2nd Interested Party.



2. The two applications dated 27th March 2025 and 16th April 2025 seek to enjoin Winnie Jeptum Bargaroria and Selina Jemutai Bargaroria respectively as Interested Parties. The applicants contend that they are beneficiaries of the estate of the late Barnabas Tuitoek Bargaroria and that the subject matter of the present suit relates to assets forming part of the deceased's estate, thereby conferring upon them a stake in the proceedings.
3. In their Grounds of Opposition dated 20th July 2025, the 1st, 5th, 6th and 7th Defendants oppose the applications for joinder on the basis that the proposed Interested Parties have failed to satisfy the legal threshold for joinder as articulated in *Francis Karioki Muruatetu & Another v Republic & 5 Others* [2016] eKLR.
4. The said Defendants contend that the dispute before this Court concerns the Plaintiff's alleged exclusion as a director of the 2nd and 3rd Defendants and that the proposed Interested Parties have not demonstrated any identifiable or legally cognizable interest in that corporate governance dispute. It is further argued that no prejudice has been shown to arise from their non-joinder and that the applications are speculative, brought in bad faith, and intended to unnecessarily expand and complicate the proceedings.
5. The 2nd and 3rd Defendants, in their Grounds of Opposition dated 18th July 2025 and 31st July 2025, similarly contend that the Intended Interested Parties have approached this Court in their individual capacities as beneficiaries of the estate of the late Barnabas Tuitoek Bargaroria, without demonstrating any legal interest in the subject matter of the suit. They submit that the estate of a deceased person can only sue or be sued through duly appointed personal representatives and that the present dispute concerns the Plaintiff's alleged prejudice as a director, with no demonstrated nexus to succession proceedings.
6. The Notice of Motion dated 15th April 2024 is brought under Sections 1A, 1B and 3A of the *Civil Procedure Act*, Order 51 of the Civil Procedure Rules, and Sections 28, 284 and 286 of the *Companies Act*. The Plaintiff seeks interlocutory injunctive relief restraining the 1st, 5th and 6th Defendants from removing him as a director of the 2nd Defendant and from convening any meeting to effect such removal, pending the hearing and determination of the suit. He further seeks to restrain the 8th Defendant from effecting changes in relation to the 2nd Defendant.
7. The application is supported by the affidavit of the Applicant, Victor Kipkemei Bargaroria. He depones that he is a director of the 2nd Defendant and instituted the suit in that capacity but has since been sidelined by the 1st, 5th and 6th Defendants in the management of the company. He avers that a virtual board meeting held on 28th March 2024 accepted the resignation of Highland Registrars Limited as Company Secretary and appointed a replacement without his meaningful participation and over his objection. He alleges irregularities in the convening and conduct of the said meeting, including alleged backdating, and states that a special notice has since been issued seeking his removal as a director. He contends that the intended removal is calculated to sabotage the pending suit and that unless restrained, he will suffer prejudice.
8. The application is opposed. In his Replying Affidavit sworn on 7th May 2024, Daniel Kiptoo Bargaroria, the 1st Defendant, depones that he is a director and majority shareholder of the 2nd Defendant, holding 80% of the issued shares, and a director of the 3rd Defendant. He avers that the Plaintiff has not been sidelined and has been duly notified of meetings, annexing notices, agendas and minutes of meetings held on 9th December 2022, 13th June 2023, 28th March 2024 and 19th April 2024.



9. The 1st Defendant denies any irregularities in the resignation of Highland Registrars Limited as Company Secretary and explains that any delay in commissioning a statutory declaration was inadvertent and subsequently rectified. He further depones that the meeting of 28th March 2024 commenced late for logistical reasons and that the Plaintiff participated fully.
10. He avers that as majority shareholder he lawfully requisitioned a general meeting under Sections 276 and 277 of the *Companies Act* to propose the Plaintiff's removal as director and that such removal is a statutory corporate action which does not affect the Plaintiff's right to maintain the present suit. He contends that the application is frivolous, vexatious and intended to interfere with lawful corporate governance.
11. The 2nd and 3rd Defendants rely on the Replying Affidavit sworn by Daniel Kiptoo Bargoria and adopt its contents in entirety. Similarly, the 6th Defendant, David Kimutai Bargoria, and the 5th Defendant, Rebecca Jepkemboi Bargoria, in their respective Replying Affidavits sworn on 7th May 2024, adopt and reiterate the contents of the 1st Defendant's affidavit.
12. The three applications were canvassed by way of written submissions, all of which I have carefully considered.

Analysis and determination

13. I will first deal with the applications for joinder.
14. The legal framework governing joinder of an interested party is provided by the provisions of Order 1 Rule 10 of the Civil Procedure Rules, as amended in 2020, as read with related provisions enacted subsequent thereto. It provides for the addition of "a necessary" party, thus:

“The court may at any stage of the proceedings, either upon or without the application of either party...order 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.”
15. The intended Interested Parties approach this Court as beneficiaries of the estate of the late Barnabas Tuitoek Bargoria, contending that the assets in dispute relate to the deceased's estate.
16. The Respondents oppose the applications on the ground that the present dispute concerns the Plaintiff's alleged exclusion as a director of the 2nd and 3rd Defendants. They argue that no nexus has been demonstrated between the corporate governance dispute before this Court and the personal rights of the proposed Interested Parties as beneficiaries.
17. The Supreme Court set out guidance on the requirements for an application for joinder as an Interested Party, in the case of Francis Kariuki Muruatetu & Another v Republic & 5 Others, Petition 15 of 2015 and gave three principles to be followed. At paragraph 37 the Court stated that the Applicant(s) must show:
 1. The personal interest or stake that the party has in the matter must be set out in the application. The interest must be clearly identifiable and must be proximate enough, to stand apart from anything that is merely peripheral.



2. The prejudice to be suffered by the intended interested party in case of non-joinder, must also be demonstrated to the satisfaction of the Court. It must also be clearly outlined and not something remote.
 3. Lastly, a party must, in its application, set out the case and/or submissions it intends to make before the Court, and demonstrate the relevance of those submissions. It should also demonstrate that these submissions are not merely a replication of what the other parties will be making before the Court.
18. I have perused the pleadings. The gravamen of the suit is whether the Plaintiff has been unlawfully excluded from management and whether steps taken toward his removal as director were irregular or unlawful. The cause of action is grounded in company law and corporate governance, not in succession.
 19. It is trite law that the estate of a deceased person can only sue or be sued through a duly appointed personal representative pursuant to Section 82 of the *Law of Succession Act*. Beneficiaries, acting in their individual capacities, have no locus standi to litigate on behalf of the estate absent a grant of representation.
 20. The intended Interested Parties have not demonstrated that they are administrators of the estate. Nor have they demonstrated how the removal or retention of the Plaintiff as a director directly prejudices their proprietary rights.
 21. Their interest, as disclosed, is remote and contingent. It does not meet the threshold of a clearly identifiable and proximate stake.
 22. I further find that the intended Interested Parties have not demonstrated the specific submissions they intend to advance that would not otherwise be ventilated by the existing parties. Their participation would conflate corporate governance issues with succession matters and unnecessarily expand the scope of the dispute.
 23. In the premises, the Notices of Motion dated 27th March 2025 and 16th April 2025 are devoid of merit and are hereby dismissed with costs to the Respondents.
 24. In his application dated 15th April 2024, the Plaintiff seeks interlocutory injunctive relief restraining the Defendants from removing him as a director and restraining the 8th Defendant from effecting changes in the company's records.
 25. The principles governing the grant of interlocutory injunctions are settled in *Giella v Cassman Brown & Co. Ltd*, namely: the applicant must establish a prima facie case with a probability of success, the applicant must demonstrate that he will suffer irreparable harm not compensable in damages, and if in doubt, the court will determine the matter on a balance of convenience.
 26. These principles were further elaborated in *Nguruman Limited v Jan Bonde Nielsen & 2 Others*, where the Court of Appeal emphasized that the three conditions are sequential.
 27. The first issue is whether the applicant has established a prima facie case with a probability of success. A prima facie case was defined in *Mrao Ltd v First American Bank of Kenya Ltd & 2 Others (2003) eKLR* as follows:

“A prima facie case in a civil application includes but is not confined to a genuine and arguable case. It is a case which, on the material presented to the court, a tribunal properly directing



itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”

28. The Plaintiff contends that meetings were irregularly convened, that the resignation of the company secretary was improperly handled, and that steps have been initiated to remove him as director in bad faith to defeat the pending suit.
29. The 1st Defendant, who holds 80% of the issued shares, depones that he lawfully requisitioned a meeting under Sections 276 and 277 of the *Companies Act* to propose the Plaintiff's removal. The documentary material annexed demonstrates notices, agendas and minutes evidencing participation or notification of the Plaintiff.
30. Section 139 of the *Companies Act* (read together with Sections 276–277) permits the removal of a director by ordinary resolution, subject to procedural compliance. The removal of a director is a statutory corporate action.
31. At this interlocutory stage, the Plaintiff has not demonstrated that the statutory process has been breached. Allegations of bad faith and ulterior motive remain contested issues to be determined at trial. Importantly, removal from office does not extinguish the Plaintiff's right to prosecute the present suit.
32. I am not persuaded that a prima facie case with a probability of success has been established.
33. Regarding irreparable harm. The Plaintiff argues that removal would render the suit nugatory. Irreparable harm is injury that cannot be adequately compensated by an award of damages. Removal from office as director, if ultimately found unlawful, is compensable by damages or declaratory relief. It does not constitute irreparable injury.
34. The balance of convenience tilts in favour of allowing the company to exercise its statutory powers in accordance with the *Companies Act*. Courts must be slow to interfere with internal corporate management unless clear illegality is demonstrated. Courts generally, will not interfere in the internal management of companies acting within their powers.
35. Granting the injunction would suspend the statutory rights of the majority shareholder and unduly interfere with corporate governance.
36. In the circumstance, I find that the notice of motion dated 15th April 2024 is bereft of merit and is dismissed with costs.
37. In the result, I make the following dispositive orders:
 - i. The Notices of Motion dated 27th March 2025 and 16th April 2025 seeking joinder as Interested Parties are dismissed with costs.
 - ii. The Notice of Motion dated 15th April 2024 by the Plaintiff is dismissed with costs.

It is so ordered

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 26TH DAY OF FEBRUARY 2026.

P.M MULWA

JUDGE

In the presence of:

Mr. Kipkemboi for Plaintiff



Mr. Abongo h/b for Mr. Omondi for 1st, 5th, 6th & 7th Defendants

Mr. Gatheru for 2nd & 3rd Defendants

Mr. Muchiri for 4th Defendant

Ms. Mueni for intended 1st Interested Party

Mr. Nyambegera for intended 2nd Interested Party

Court Assistant: Carlos

