



**Kamau v Riugu & another (Civil Case E008 of 2025)
[2026] KEHC 3462 (KLR) (16 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 3462 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL CASE E008 OF 2025
SM GITHINJI, J
MARCH 16, 2026
IN THE MATTER OF GOLDEN PEAK SHELTERS LIMITED
AND
IN THE MATTER OF COMPANIES ACT NO. 17 OF 2015
AND
IN THE MATTER OF DERIVATIVE ACTION**

BETWEEN

ANTHONY GAKUBU KAMAU PLAINTIFF

AND

JACK BONIFACE RIUGU DEFENDANT

AND

GOLDEN PEAK SHELTERS LIMITED INTERESTED PARTY

RULING

1. For determination is the Notice of Motion dated 24/3/2025 pursuant to Sections 140, 142, 143, 144, 145, 146, 147, 148, 149 of the *Companies Act* 2015, Order 40, Order 51 Rule 1 of the Civil Procedure Rules, Section 3A of the *Civil Procedure Act*, seeking that:
 1. Spent
 2. Spent
 3. Pending the hearing and determination of this Suit, the Respondent, his agents, proxies, servants and/or anyone acting on his behalf be restrained from leasing, selling and/or in any other way interfering with Land Referenced numbers Kiirua/nkando/ 8349, 8347, 8348,



8346, 8344, 8345, 8354, 8353, 8352, 8351, 8350, 8361,8359, 8360, 8355, 8356, 8357, 8358, 8365, 8366, 8364, 8363, 8362 as well as Kibirichia Ntumburi 4670, 4672, 4673, 4674, 4675 owned by the Interested/Affected Party.

4. Costs of this application be in the cause.
2. The application is premised on the grounds that the Applicant has been running the Affected Party since incorporation as the Managing Director, until 2023, when the Respondent secretly established Golden Seed Realtors Limited with another partner, to run the core business as the Interested Party herein, and in a bid to oust him from the company to pilfer the company's assets. The actions of the Respondent are in breach of the statutory duties envisaged under the Act, and hence the need to protect the interests of the Affected Party.
3. The Respondent swore a replying affidavit on 3/6/2025 in opposition to the application. He averred that in January 2022, he and the Applicant started a real estate Company, the Affected Party herein. In February 2022, he solely financed the purchase of L.R No. Kibirichia/Ntumburi/193, without the Applicant's contribution. The Applicant secured a Ksh. 3,000,000 loan from Kenpipe Sacco, but upon default on repayment, the said debt was transferred to him and other guarantors. In December 2022, while he was away for treatment, the Applicant deceitfully sold the Affected Party's properties and diverted part of the proceeds therefrom to himself. In September 2023, he fell into depression as a result of the fraudulent actions of the Applicant, during which period the Applicant fraudulently transferred L.R No. Kibirichia/Ntumburi/1273 to a 3rd party. They unsuccessfully tried to mediate their differences and at some point he engaged the DCI to investigate the conduct of the Applicant. He purely incorporated Golden Seed Realtors Limited to deal with parcels of land situate in Nairobi and Kiambu Counties after realizing that the Applicant had put restrictions on the parcels of land in Meru. The Applicant has come to the court with unclean hands and the application ought to be dismissed with costs.
4. The application was canvassed by way of written submissions, which were filed by counsel.

Determination

5. Having considered the application, the response and the submissions on record, I find the issue for determination to be whether the threshold for the grant of the temporary injunction has been met.
6. The parties herein are both directors of the Affected Party duly incorporated in 2021. Derivative actions have been extensively expounded in Ghelani Metals Ltd & 3 Others v Elesh Ghelani Natwarlal & Anor (2017) KEHC 4629 (KLR) as follows; "Derivative actions are the pillars of corporate litigation. As I understand it, a derivative action is a mechanism which allows shareholder(s) to litigate on behalf of the corporation often against an insider (whether a director, majority shareholder or other officer) or a 3rd party whose action has allegedly injured the corporation. The action is designed as a tool of accountability to ensure redress is obtained against all wrongdoers in the form of a representative suit filed by a shareholder on behalf of the corporation."
7. Similarly in Ayim v Multitrade Industrial Supplies Limited & 2 others; Arican Banking Corporation (Interested Party) [2022] KEHC 16231 (KLR), the court (C. Mwita J, as he then was) espoused that, "A derivative action is a claim brought or continued by a shareholder on behalf of the company in relation to a breach of duty by a director. This action is taken where the majority shareholders or directors wrongfully prevent the company from bringing or proceeding with

such a claim itself and the claim is usually brought for the benefit of the company. This procedure is necessary as a director owes a duty to the company and not to the shareholders.



Section 238 of the Act defines what a derivative action is and who may bring a derivative action. According to section 238 (1), it is proceedings by a member of the company in respect of a cause of action vested in a company and is seeking relief on behalf of the company. Sub section (3) requires that the claim 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. The section makes it plain that a derivative action is brought on behalf of the company and the relief sought is for the benefit of the company. In essence, a derivative action cannot be brought for the benefit of a plaintiff claiming to bring the suit as a derivative claim.”

8. The Applicant accuses the Respondent of pilfering the assets of the Affected Party, allegations which the Respondent has vehemently denied. In rejoinder, the Respondent has counter-accused the Applicant of fraud and other illegalities, in respect of which criminal proceedings have reportedly been instituted.
9. In my considered view, the question whether the Respondent’s aforementioned actions contravened his statutory duty to protect the Affected Party, can only be conclusively determined after the matter is substantively heard.
10. I find that the Applicant has demonstrated, prima facie, the need to safeguard the Affected Party’s interests pending the hearing and determination of the case on its merits.
11. The upshot from the foregoing analysis is that the application dated 24/3/2025 is merited and it is hereby allowed in terms of prayer 3 thereof. To the effect that:- Pending the hearing and determination of this Suit, the Respondent, his agents, proxies, servants and/or anyone acting on his behest is restrained from leasing, selling and/or in any other way interfering with Land Referenced numbers Kiirua/nkando/ 8349, 8347, 8348, 8346, 8344, 8345, 8354, 8353, 8352, 8351, 8350, 8361, 8359, 8360, 8355, 8356, 8357, 8358, 8365, 8366, 8364, 8363, 8362 as well as Kibirichia Ntomburi 4670, 4672, 4673, 4674 and 4675 owned by the Interested/Affected Party.
12. Cost be in the cause

DATED AND DELIVERED AT MERU THIS 16TH DAY OF MARCH, 2026.

S.M. GITHINJI- JUDGE

16/3/2026

Parties:-

Mr. Kahuthu for the Defendant (Absent).

Mr. Karanja for the Plaintiff (Absent).

