

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND TAX DIVISION
HCCOMM NO. E072 OF 2024

IN THE MATTER OF NYACITY 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 NYACITY 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
NYACITY LIMITED.....INTENDED 2ND DEFENDANT

RULING

1. The intended 2nd defendant/applicant filed a Chamber Summons application dated 23rd May 2025 pursuant to the provisions of Sections 1A, 1B, 3, 3A, 80 & 63(c) of the Civil Procedure Act, Order 1 Rule 10(2), Order 42 Rule 6(1)

& Order 45 Rule 1 of the Civil Procedure Rules, Articles 47(1) & (2), 48, 50(1) & (4) and 159(2) of the Constitution, and all other enabling provisions of the law. The intended 2nd defendant prays for orders that Nyacity Limited be joined as the 2nd defendant in this suit, for the law firm of Ike Owiti & Company Advocates to be placed on record as Counsel for the 2nd defendant, and that the Ruling delivered on 28th March 2025, particularly, the subsequent Orders granting temporary injunctions, be set aside, interpreted, and amended to allow all parties to seek mutual approval in the management, operations, and affairs of the companies.

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 and one of the major Shareholders of the intended 2nd defendant. Mr. Eleshkumar averred that the plaintiffs filed an application against the defendants on 17th February 2024 and this Court delivered a Ruling on 28th March 2025 granting temporary injunctions restraining the defendants from calling or holding general meetings and from exercising majority Shareholder rights or interfering with the management, operations, and affairs of several companies without the plaintiffs' consent or Court orders. He stated that the intended 2nd defendant did not participate in the prior application as it was never sued in its own capacity despite being a separate legal entity.
3. Mr. Eleshkumar asserted that the intended 2nd defendant now seeks to be joined as the 2nd defendant in this suit to obtain reliefs from the Court, to request interpretation and review of the existing Orders, and address the practical difficulties and confusion caused in company management and decision-making. He contended that the impugned Ruling has sidelined

certain Directors from participating in the intended 2nd defendant's operations, that an error is apparent on the face of the record and that a miscarriage of justice may occur if the intended 2nd defendant company is not joined to these proceedings.

4. In opposition to the instant application, the plaintiffs filed a replying affidavit sworn on 10th September 2025 by Mr. Shrikesh Gheewala, the 2nd plaintiff herein and a Director of the intended 2nd defendant company. Mr. Shrikesh averred that the instant application is defective and should be struck out because it was filed without a company resolution, contains erroneous terminology ("enjoin" instead of "join"), and does not meet the legal threshold for joinder under Order 10 Rule 2. He further averred that the appointment of the law firm of Ike Owiti & Company Advocates is premature and unlawful as no proper resolution was passed, thus the said law firm has been acting without legal authority. Mr. Shrikesh contended that the omnibus prayer seeking to amend the prior Ruling is misconceived.
5. He attributed the stalemate in the intended 2nd defendant company's operations to the actions or inactions of the 1st defendant, including the filing of a separate pending suit and issuing an improper Notice for an Annual General Meeting. Mr. Shrikesh stated that although the intended 2nd defendant company was not part of the earlier mediation or succession settlements, its assets remain part of the Estate of the deceased, of which the plaintiffs are beneficiaries.
6. In a rejoinder, the intended 2nd defendant filed a supplementary affidavit sworn on 1st October 2025 by Mr. Eleshkumar Chandrakant Gheewala, a Director and one of the major Shareholders of the intended 2nd defendant. Mr. Eleshkumar deposed that this Court's Ruling delivered on 28th March 2025, which issued a temporary injunction restraining the defendants from calling

meetings without the plaintiffs' approval or Court orders, directly affects the intended 2nd defendant's ownership, management, and daily operations. He asserted that the intended 2nd defendant company should be joined to this suit to protect its interests. Mr. Eleshkumar averred that the law firm of Ike Owiti & Company Advocates already represents related companies in the same series, thus any appointment of Advocates by the intended 2nd defendant can be ratified before the hearing of the main suit.

7. The instant application was canvassed by way of written submissions. The 2nd intended defendant's submissions were filed on 9th October 2025 by the law firm of Ike Owiti & Company Advocates, while the plaintiffs' submissions were filed by the law firm of Kimamo Kuria Advocates on 7th November 2025.
8. Mr. Owiti, learned Counsel for the intended 2nd defendant relied on the provisions of Order 1 Rule 10(2) of the Civil Procedure Rules, 2010, and the case of **Kingori v Chege & 3 others** [2002] 2 KLR 243 and the Court of Appeal case of **Civicon Limited v Kivuwatt Limited & 2 others** [2015] KECA 588 (KLR), and submitted that joinder of parties can occur at any stage, including pre-trial, during trial, post-judgment, or even at the appellate stage. Counsel argued that the Ruling delivered on 28th March 2025, which granted temporary injunctions restraining the defendants from exercising majority shareholder rights or calling for meetings without the plaintiffs' consent, directly affects the management, ownership, and daily operations of the intended 2nd defendant company. He maintained that the said Ruling has sidelined the 1st defendant and created confusion regarding decision-making.
9. Counsel cited the provisions of Order 9 Rule 1 of the Civil Procedure Rules, 2010, and stated that since the law firm of Ike Owiti & Company Advocates

is already representing related companies in the series of matters between the parties herein, it should be allowed to represent the intended 2nd defendant. Mr. Owiti referred to the provisions of Section 80 of the Civil Procedure Act and Order 45 of the Civil Procedure Rules, 2010, and the Court of Appeal cases of **National Bank of Kenya Ltd v Njau** [1997] KECA 71 (KLR), and submitted that the impugned Ruling has resulted in practical difficulties in the management of the intended 2nd defendant company, thus an amendment is necessary to allow all parties herein to seek each other's approval before making decisions.

10. He relied on the cases of **Gladys Nduku Nthuki v Letshego Kenya Limited; Mueni Charles Maingi (Intended Plaintiff)** [2022] KEHC 2227 (KLR) and **Sumac Microfinance Bank Limited v Gitau & 3 others** [2025] KEHC 11005 (KLR), to demonstrate that joinder, proper representation, and amendment of prior Rulings are consistent with established practice and the interests of justice.
11. Mr. Kimamo Kuria, learned Counsel for the plaintiff submitted that the prayers for joinder of Nyacity Limited as the 2nd defendant in this suit and for it to be represented by the law firm of Ike Owiti & Company Advocates, are defective and incapable of being granted. He relied on the case of **Kenya Commercial Bank Limited v Stage Coach Management Ltd** [2014] KEHC 7474 (KLR), and argued that no resolution was passed by the intended 2nd defendant company authorizing such action. Counsel further submitted that the Ruling delivered on 28th March 2025 remains self-explanatory and does not require interpretation or amendment.
12. Mr. Kimamo Kuria cited the cases of **Republic v Advocates Disciplinary Tribunal Ex parte Apollo Mboya** [2019] KEHC 6379 (KLR) and **Kishor**

Kumar Dhanji v Ndeffo Limited & 4 others [2011] KEHC 2578 (KLR), in contending that the intended 2nd defendant company has failed to satisfy the threshold for review under Section 80 of the Civil Procedure Act and Order 45 Rule 1 of the Civil Procedure Rules, 2010. Counsel stated that the 1st defendant has caused a stalemate in the intended 2nd defendant company by filing pending litigation and issuing a short-notice for an AGM, thereby interfering with the intended 2nd defendant company's operations, instead of coordinating with the plaintiffs.

ANALYSIS AND DETERMINATION.

13.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 Ike Owiti & Company Advocates should be granted leave to come on record for the intended 2nd defendant; and**
- iii) Whether this Court's Ruling delivered on 28th March 2025 should be set aside, interpreted, and amended to allow all parties to seek mutual approval in the management, operations, and affairs of these companies.**

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

14.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.

15. In **Civicon Limited v Kivuwatt Limited & 2 others** (supra), the Court of Appeal in dealing with an application similar to this 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.

16. 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 a similar application 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.*

17. It is not disputed that the intended 2nd defendant is a distinct legal entity, separate from its Directors and Shareholders, and that its management and operations are directly affected by the Ruling delivered on 28th March 2025, which restrained the defendants from exercising majority Shareholder rights or convening meetings without the plaintiffs' consent. The record further shows that the intended 2nd defendant company did not participate in the

application that culminated in the said Ruling. In the circumstances, I am satisfied that its exclusion from these proceedings would hinder the just and effective determination of issues relating to its ownership and management. Furthermore, this Court notes that the outcome of these proceedings will have a direct bearing on the intended 2nd defendant company and any final orders concerning its management, Shareholder rights, or regulatory compliance would in practical terms, require implementation by the intended 2nd defendant company itself.

18. In light of the above, this Court finds that the intended 2nd defendant company's presence in this suit would assist the Court in effectually and completely determining all questions in controversy in this suit, and in ensuring enforceability of any decree that may ultimately be issued.

19. Although the plaintiffs argue that no company resolution was passed to authorize the filing of the instant application, this Court is cognizant of the fact that ratification of representation and participation may be effected at any time before the hearing of the main suit. It is trite law that a company ordinarily acts through resolutions of its Board of Directors or Shareholders. The application before this Court does not however entail the institution of substantive proceedings by the company in its own name. Instead it seeks the joinder of the company as a party to existing proceedings that directly affect its affairs.

20. Order 1 Rule 10(2) of the Civil Procedure Rules, 2010, expressly grants the Court discretion to add a party either upon application or on its own motion. In the premise, this Court is of the considered view that the power to join a necessary party rests within the Court's discretion and it is not exclusively contingent upon the existence of a formal company resolution, particularly,

where the material placed before the Court reveals an apparent deadlock that has hindered the passing of such a resolution, as is evident in this case.

21. 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.

22. This Court is of the considered view that the import of the above provisions is that where a relief is sought in respect of a company's affairs, the company is entitled to be served, to enter appearance, and to be heard. I am therefore persuaded that it would be contrary to the principles of natural justice, as well as Article 50(1) of the Constitution, to determine substantive questions touching on a company's management and affairs without affording it an opportunity to participate in the proceedings.

23. Accordingly, in view of the circumstances of this case, this Court is satisfied that Nyacity Limited is a necessary and proper party to these proceedings. Further, since the interests of the intended 2nd defendant company are directly implicated in this suit, I am persuaded that 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.

24. 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 Ike Owiti & Company Advocates should be granted leave to come on record for the intended 2nd defendant.

25. Under provisions of Order 9 Rule 1 of the Civil Procedure Rules, 2010, a party can appear in person, a recognized agent and/or through an Advocate duly

appointed to act on its behalf. Given that this Court has found the joinder of Nyacity Limited appropriate, it follows that the company requires representation so that it can effectively participate in these proceedings.

26. It is not disputed that the law firm of Ike Owiti & Company Advocates already represents related companies in the same corporate series, including Cassava Plantations Limited, Nyaku Limited and Santack Enterprises Limited, it as such possesses records and knowledge pertinent to the management and operations of Nyacity Limited.

27. While the plaintiffs asserted that the appointment is premature and lacks a company resolution, the Court finds that such authority may be ratified prior to the hearing of the main suit and any defect relating to formal authorization is curable by ratification and does not in the circumstances of this case, warrant denial of representation. In addition, it is evident from the affidavits filed in support of, and in opposition to the instant application that 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.

28. Accordingly, this Court is persuaded that it is just and equitable to grant the law firm of Ike Owiti & Company Advocates leave to come on record for Nyacity Limited.

Whether this Court's Ruling delivered on 28th March 2025 should be set aside, interpreted, and amended to allow all parties to seek mutual approval in the management, operations, and affairs of these companies.

29. As to the interpretation of the Ruling delivered on 28th March 2025, 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. They were also prohibited from exercising majority Shareholder rights or making management decisions that interfere with the operations or affairs of the said companies without the plaintiffs' approval or Court authorization.

30. The above was 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 injunctions granted were therefore meant to preserve the *status quo* of the aforesaid companies and ensure that they continue operating normally until the Court makes a final determination. In the premise, any corporate actions by the defendants that violate the Orders issued in the Ruling of 28th March 2025, including holding meetings, transferring shares, or making management decisions, will constitute a breach of the Court said Orders.

31. On the issue as to whether this Court can review, set aside and/or amend the said Ruling, a Court's jurisdiction to review its own decisions has to be exercised within the parameters of Section 80 of the Civil Procedure Act Cap 21, Laws of Kenya and Order 45 Rule 1 of the Civil Procedure Rules, 2010, which provide as hereunder-

80. Any person who considers himself aggrieved-

by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or by a decree or order from which no appeal is allowed by this Act, May apply for a review of judgement to the court, which passed the decree or made the order, and the court may make such order thereon as it thinks fit.

Order 45 Rule 1

1) Any person considering himself aggrieved-

- a) *By a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or*
- b) *By a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for review of judgement to the court which passed the decree or made the order without unreasonable delay.*

32. The Court in the case of **Alpha Fine Foods Limited v Horeca Kenya Limited & 4 others** [2021] KEHC 4068 (KLR), in dismissing an application for review held as follows -

...section 80 prescribes the power of review while Order 45 stipulates the rules. However, the rules limit the grounds for evaluating requests for review. Simply put, there are definite limits to the exercise of the

power of review. The rules prescribe the jurisdiction and scope of review. They limit review to the following grounds:

- a) Discovery of new and important matter or evidence which after the exercise of due diligence, was not within the knowledge of the applicant or could not be produced by him at the time when the decree was passed or the order made or;***
- b) On account of some mistake or error apparent on the face of the record, or***
- c) For any other sufficient reason and whatever the ground there is a requirement that the application has to be made without un reasonable delay.***

33. It is now well settled that a Court's jurisdiction to review its own decisions is limited and is not intended to afford a party an opportunity to re-argue or appeal against a decision merely because it is dissatisfied with it.

34. The intended 2nd defendant company contended that the impugned Ruling has occasioned practical difficulties in its corporate decision-making and has effectively sidelined certain Directors. I am however not persuaded that such operational challenges amount to a mistake or error apparent on the face of the record. This Court is of the considered view that the prayer seeking amendment and/or adjustment of the Orders earlier issued so as to permit management decisions by mutual consent falls outside the narrow confines of review jurisdiction and in substance, constitutes a request to vary or reconsider the Orders previously granted, rather than to correct an obvious error apparent on the record.

35. Accordingly, this Court is not persuaded that the intended 2nd defendant has made out a case to warrant being granted an order for review and/or for setting aside of the said Ruling.

36. This Court finds that the intended 2nd defendant's application dated 23rd May 2025 is partly merited and it is hereby allowed in the following terms -

- i) Nyacity Limited is hereby joined as the 2nd defendant in this suit;**
- ii) The law firm of Messrs. Ike Owiti & Company Advocates is hereby 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 13th day of March 2026. Ruling delivered through Microsoft Teams Online Platform.

NJOKI MWANGI

JUDGE

In the presence of:

Mr. Owiti for the intended 2nd defendant/applicant

Ms Mukui h/b for Mr. Kimamo Kuria for the plaintiffs/respondents

Ms Kale h/b for Mr. Nyaanga for the 1st defendant

Ms B. Wokabi – Court Assistant.