



REPUBLIC OF KENYA



KENYA LAW
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**Wahome & 2 others v Githiri (Civil Case E003 of 2024)
[2026] KEHC 4990 (KLR) (17 April 2026) (Ruling)**

Neutral citation: [2026] KEHC 4990 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
CIVIL CASE E003 OF 2024
M THANDE, J
APRIL 17, 2026**

BETWEEN

GEOFFREY MAINA WAHOME 1ST PLAINTIFF

SAMUEL MWANGI NDONGA 2ND PLAINTIFF

RENMAN AFRICA LIMITED 3RD PLAINTIFF

AND

EMMANUEL MUNIU GITHIRI DEFENDANT

RULING

1. What is before Court for consideration is the Plaintiffs' application dated 26.4.24, seeking the following orders:
 1. Spent.
 2. That the 1st and 2nd Applicants be granted leave to proceed with the suit filed vide the Plaint filed herewith as a Derivative Claim seeking relief on behalf of Renman Africa Limited in respect of the acts and omissions of the Defendant/Respondent involving fraud, conflict of interest, breach of duty and breach of trust in his capacity as Director of Renman Africa Limited on such terms as the Honourable Court consider fit.
 3. Spent.
 4. Spent.
 5. That pending the hearing and determination of the main suit, the Defendant, Emmanuel Muniu Githiri, be compelled to produce the books of records, banking slips, audited financial accounts, and bank statements of the 3rd Plaintiff company in their custody from 19th November 2020 to date.



6. That pending the hearing and determination of the main suit, a temporary injunction do issue restraining the defendant, Emmanuel Muniu Githiri, his servants, agents, and/or employees from selling, alienating, transferring, charging, disposing of, removing or in any manner whatsoever dealing with the assets of the 3rd Plaintiff, Renman Africa Limited.
7. That costs of this Application be provided for.
2. The Plaintiffs claim that the 3rd Plaintiff (the company) has not pursued the subject and is incapable of acting through its directors as the governing body and is not in a position to pursue a claim; that the 1st and 2nd Plaintiffs have a reasonable basis for bringing the claim as shareholders and former directors of the company; that it is more appropriate to continue the case as a derivative claim as the alleged wrongdoer is in control of the company; that in the interests of justice and fairness, the 1st and 2nd Plaintiffs should be granted leave to continue the derivative claim as the suit has been brought in good faith.
3. The 1st and 2nd Plaintiffs further averred that in April 2022, in their former capacity as investors and directors of the company, raised concerns regarding the management of the company's funds and assets by the Defendant. As a result of this mismanagement they have opted to relinquish their roles as investors and directors; that the Defendant has acted contrary to the best interests of the company, thereby compromising its financial affairs and their investment; that the Defendant called a special meeting of shareholders of the company in which the 1st and 2nd Plaintiffs were removed as directors of the company; that because the Defendant holds majority shareholding in the company of 10,000 shares, the 1st and 2nd Plaintiffs who hold 804 shares in total are unable to pass any resolution for the purpose of protecting the company; that for the foregoing reasons and failure by the Defendant to fulfil his statutory obligations as director, common law and share subscription agreement, the 1st and 2nd Plaintiffs have been inconvenienced, incurred loss and expense; that unless the orders sought are granted, the Defendant's actions will occasion financial ruin of the company and compromise the 1st and 2nd Plaintiffs' investment; that the Defendant is unlikely to suffer any prejudice if this Application is allowed.
4. The Defendant opposed the Application vide grounds of opposition dated 1.10.24. The grounds are that the suit does not satisfy the requirements for a derivative action as per Section 238 of the *Companies Act*, as the 1st and 2nd Plaintiffs are not seeking relief on behalf of the company, but for their own gain; that the suit herein contradicts the requirements of a derivative suit as the company being the 3rd Plaintiff is a party to the suit; that the Plaintiffs allege misapplication of funds injected into the company but have not provided an ounce of evidence before this Court proving the same or any specific financial loss occasioned by the company, which is essential for a derivative claim; that the primary reliefs sought in paragraph 22 of the *Plaint* are monetary and intended for the personal benefit of the 1st and 2nd Plaintiffs, which contradicts the principle that derivative actions must seek remedies for the benefit of the company; that Clause 24 of the Share Subscription Agreement dated 19.11.2020 clearly provides that disputes arising from the said Agreement should first be settled through amicable settlement and to Arbitration if the former fails; that the Applicants have not attempted to amicably resolve the issues raised in the *Plaint* nor have they referred the dispute to Arbitration and thus the Court lacks jurisdiction to hear this matter.
5. I will begin with the prayer for leave to proceed with the suit as a derivative suit. Section 238 of the *Companies Act* defines a derivative suit as follows:
 1. In this Part, "derivative claim" means proceedings by a member of a company—



- a. in respect of a cause of action vested in the company; and
 - b. seeking relief on behalf of the company.
6. A derivative suit is one filed by a shareholder of a company on behalf of the company for wrongs committed against it or for its benefit. The purpose of a derivative suit is to safeguard the company from wrongful actions or neglect by its directors, significant shareholders or third parties.
 7. In *Juletabi African Adventure Limited & another v Christopher Michael Lockley* [2017] KECA 118 (KLR) the Court of Appeal articulated as follows regarding a derivative suit:
 23. We think we have said enough, on the basis of those decisions to demonstrate that a derivative suit is basically brought on behalf of a company for wrongs committed against it or in other words for the benefit of the company. Was the nature of the suit instituted by the respondent derivative? We think not. Like the trial court, we find that the respondent did not institute the suit on behalf or for the benefit of the 1st appellant for perceived wrong(s) against it. Rather, he filed the suit for his own benefit for wrongs committed against him by the appellants, to wit, breach of trust. Consequently, we concur with the trial court that he did not require leave before instituting the suit.
 8. In order to determine if the suit filed by the Plaintiffs is derivative, it is necessary to look at the reliefs sought in their plaint dated 7.2.24. The Plaintiffs seek the following:
 - a. A mandatory injunction directed at the Defendant to provide all the books of account belonging to the 3rd Plaintiff for inspection as to their accuracy;
 - b. A permanent injunction directed at the Defendant to, immediately cease operating in the role of director of the 3rd Plaintiff.
 - c. An order directed at the Defendant to furnish proper accounts of the 1st and 2nd Plaintiffs' investment in the 3rd Plaintiff.
 - d. Judgment in favour of the 1st Plaintiff for the immediate refund of the sum of Kes. 2,400,000/ = with interest from the date of disbursement to the date of full and final payment.
 - e. Judgment in favour of the 2nd Plaintiff for the immediate refund of the sum Kes. 3,086,951.73/ = with interest from the date of disbursement to the date of full and final payment.
 - f. An award of general damages in favour of the 1st and 2nd Plaintiffs against the Defendant.
 - g. Interest on the monetary sums at Court rates.
 - h. Costs of the suit.
 9. The reliefs sought as set out above are clearly for the 1st and 2nd Plaintiffs' own benefit, for wrongs allegedly committed against them by the Defendant. The suit was not instituted on behalf of or for the benefit of the company. I accordingly find that the suit is not a derivatory suit and the Plaintiffs' prayer in this regard fails.
 10. I now turn to the prayers for injunctive orders. The principles governing the grant of interlocutory injunction as set out in the case of *Giella –vs- Cassman Brown* [1973] EA 358). The Court of Appeal stated:

The conditions for a grant of an interlocutory injunction are now I think well settled in East Africa. First, an applicant must show a prima facie case with a probability of success.



Secondly, an interlocutory injunction will not normally be granted unless the applicant must otherwise suffer irreparable injury, which would not adequately be compensated by an award for damages. Thirdly if the court is in doubt, it will decide an application on the balance of convenience.

11. In *Nguruman Limited v Jan Bonde Nielsen & 2 others* [2014] eKLR, the Court of Appeal had this to say about what constitutes a prima facie case:

The party on whom the burden of proving a prima facie case lies must show a clear and unmistakable right to be protected which is directly threatened by an act sought to be restrained, the invasion of the right has to be material and substantive and there must be an urgent necessity to prevent the irreparable damage that may result from the invasion.

12. The Plaintiffs seek a temporary injunction restraining the Defendant, his servants, agents, and/or employees from selling, alienating, transferring, charging, disposing of, removing or in any manner whatsoever dealing with the assets of the company.
13. The 1st and 2nd Plaintiffs bore the burden of proving that a prima facie case lies. I have carefully looked at the Application and the affidavit in support thereof. The allegations of the 1st and 2nd Plaintiffs are rather vague. The 1st and 2nd Plaintiffs have alleged that the Defendant has not acted in the best interest of the company and has frustrated its financial affairs and the 1st and 2nd Plaintiffs' investment in the company. They have however not indicated the manner in which the Defendant has jeopardized the best interest of the company and their investment. They have not given details of any specific financial loss occasioned by the company or themselves. They have also not shown that the Defendant intends to or was in the process of selling, alienating, charging or transferring or in any way disposing of the assets of the company or indeed the details of the assets at risk.
14. Applying the test in *Nguruman Limited* case (supra), the 1st and 2nd Plaintiffs were required to show a clear and unmistakable right to be protected. They were also required to show that that right is directly threatened by the acts of the Defendant which they seek to be restrained. Additionally, the 1st and 2nd Plaintiffs were required to show that the threat of the right is material and substantive and that there is urgent necessity to prevent the irreparable damage that may result from the threat or invasion of the right.
15. After considering the matter herein, I find that the Plaintiffs have not demonstrated a clear and unmistakable right to be protected. Further, they have not demonstrated an urgent necessity to prevent any irreparable damage that may result from the acts of the Defendant. It follows that the Plaintiffs have not met the test for the grant of the injunctive orders sought.
16. The Plaintiffs further pray that pending the hearing and determination of the main suit, the Defendant be compelled to produce the books of records, banking slips, audited financial accounts, and bank statements of the company in their custody from 19.11.2020 to date. I find that due to the vagueness of the allegations made by the 1st and 2nd Plaintiffs, no basis has been laid for the grant of this order. In any event, this is one of the prayers sought in the suit. I am of the view that the issue will best be considered at the hearing of the suit and the Court must refrain from preempting the outcome of the suit by delving into the same.
17. After carefully analyzing the matter, the law and the authorities cited, this Court finds that the Application dated 26.4.24 lacks merit and the same is dismissed with costs to the Defendant.

DATED, SIGNED AND DELIVERED IN MALINDI THIS 17TH DAY OF APRIL 2026



M. THANDE
JUDGE

