



**In re Old Mutual Holdings Plc (Insolvency Petition E061 of 2024)  
[2025] KEHC 1358 (KLR) (Commercial and Tax) (28 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1358 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
INSOLVENCY PETITION E061 OF 2024  
JWW MONG'ARE, J  
FEBRUARY 28, 2025**

**BETWEEN**

**JOEL KAMAU KIBE ..... PETITIONER**

**AND**

**OLD MUTUAL HOLDINGS PLC ..... RESPONDENT**

**AND**

**ANDREW STEPHEN GRAY SMITH ..... CONTRIBUTOR**

**MATHEW KIPKURUI KOECH ..... CONTRIBUTOR**

**CHESUMUT INVESTMENTS LIMITED ..... CONTRIBUTOR**

**TIMOTHY MICHAEL JOHN BURKE ..... CONTRIBUTOR**

**AND**

**OLD MUTUAL EAST AFRICA HOLDINGS LIMITED ..... INTERESTED PARTY**

**RULING**

1. As per the Petitioner's petition dated 20<sup>th</sup> August 2024, the Respondent("the Company") was incorporated on 19<sup>th</sup> July 2007 previously under the name "Quadco Sixty One Limited" as a Private Limited Liability Company. That by a special Resolution of the Company that was duly approved by the Registrar of Companies, the Company changed its name to UAP Holdings Limited on 10<sup>th</sup> August 2007 and by a special Resolution dated 30<sup>th</sup> September 2011, the Company converted from private to a public company.
2. On or about 7<sup>th</sup> November 2012, UAP Holdings Limited issued a prospectus offering to the public 12,500,000 new ordinary shares of Kshs. 5 Nominal Value at a cost of Kshs. 60 per share. The



Petitioner claims that between 22<sup>nd</sup> July 2014 and 29<sup>th</sup> June 2015, he purchased 1,544,900 shares in the secondary market at the price of between Kshs. 100.00/= to 200.00 per share thereby investing a total of Kshs.246,678,352/= in UAP Holdings Limited(now Old Mutual Holdings PLC) .

3. The Petitioner now claims that the Company’s directors have flouted the provisions of the Company’s Articles in their (mis)management of the Company and that through a pattern of premeditated and sustained oppressive and unfairly prejudicial behaviours by the Company against the Petitioner, the former has defrauded him of his entire investment of Kshs.246,678,351.00/= and interest thereon for the last 10 years. He further complains that the Company has made unjustifiable disposal of its assets, that UAP Holdings rebranded to Old Mutual Holdings PLC and completely lost its corporate identity and that this transaction was secretive and the Petitioner and/or other minority members were not consulted on the entire exercise.
4. For these reasons, the Petitioner prays for; a declaration that the directors of the Company have been conducting its affairs in a manner oppressive to the Petitioner in his capacity as its member; an order directing the taking of accounts and that an investigation of the Company do take place by an inspector appointed by the court under section 786 of the Companies Act; an order that the Company does purchase and/or buy the shares of the Petitioner at the price he purchased them with interest thereon at 18% p.a from the date of purchase; an order to restrain any further sale of Company Assets, Shares, Land, Buildings or Stock in other Companies, an order nullifying the (proposed) sale of the Tanzania subsidiary and a declaration that the issuance of preference shares was fraudulent and null and void and that there be a cancellation of the said preference shares. Alternatively, the Petitioner seeks relief under section 424 and 425 of the Insolvency Act that the Company be liquidated and that the court appoints an Administrator to run the day-to-day affairs of the Company.
5. Together with the petition, the Petitioner has filed the Notice of Motion dated 20<sup>th</sup> August 2024 seeking the following orders:
  1. Spent
  2. That pending hearing and determination of this Petition inter alia, this Honourable Court be further pleased to issue a temporary injunction restraining the Current Board of Directors of Old Mutual Holdings PLC from doing any of the following acts;
    - a. Allotting or issuing any further share capital or preference shares to any person, and/or completing the pending issuance of preference shares.
    - b. Selling, charging, transferring or otherwise disposing any of its assets inter alia;
      - i. LR No. 209/1997 & 1999- Equity Centre Hospital Road;
      - ii. LR No. 209/11259 Union house, Ragati road;
      - iii. LR No. 209/13453 UAP Tower, Upperhill road;
      - iv. LR No. 209/5535 Orange House, Ralph Bunche Road and
      - v. Any other of its properties or assets. and this order be registered in the respective Land Registrar in the relevant Land Registries.
    - c. Procuring any further credit or borrowing from any financial institution or its members, or contributors and/or subsidiaries,
    - d. Making any further appointment or alterations within the Board of Directors,



- e. Transferring any funds, monies or stocks out of the jurisdiction of this Honourable Court to either its shareholders, purported service providers, financiers or any other person and/or changing ownership structure of the said Company and/or making exceptional or unusual amounts in excess of Kshs. 10 million to anyone.
  - f. Removing any document, accounts, papers or destroying or altering such document as are the subject of this Petition or mentioned herein from the Company premises.
3. Spent
  4. That in the alternative, this Court be pleased to appoint an Interim Receiver of all the Company's assets with powers to run the day to day affairs of the Company but without powers to transfer any property or shares of the Company without the leave of this Honourable Court pending hearing and determination of this Petition.
  5. That this Court do give directions on service and publication or advertisement of the Petition on the persons affected by it to wit;-
    - a. Subsidiary companies
    - b. Directors personally affected
    - c. The Capital Market Authority(CMA)
    - d. Other Shareholders by way of advertisement in one daily newspaper of countrywide circulation.
    - e. CDSC Kenya in its capacity as the Registrar of UAP shares.
  6. That the Court issue an order directing the taking of accounts and that an investigation of the Company do take place by an inspector appointed by the Court under Section 786 of the Companies Act pending hearing and determination of the Petition
  7. That Costs be provided for.
6. The application is supported by the grounds on its face, the affidavits of the Petitioner sworn on 20<sup>th</sup> August 2024 and 13<sup>th</sup> September 2024, a Notice to Produce dated 13<sup>th</sup> September and the supporting affidavit of Rose Wambui Maina sworn on 7<sup>th</sup> October 2024. It is opposed by the Company through the replying affidavit of its Group Chief Executive, Arthur Oginga, sworn on 30<sup>th</sup> September 2024 and the Notice of Preliminary Objection dated 16<sup>th</sup> September 2024. As the court issued ex parte orders in respect of prayer No. 2 of the Petitioner's application above, this prompted the Company and the Contributors to file applications dated 5<sup>th</sup> September 2024 and 22<sup>nd</sup> January 2025 respectively seeking to set aside and/discharge the said orders. These applications are supported by the affidavits of Arthur Oginga sworn on 6<sup>th</sup> September 2024 and 11<sup>th</sup> February 2025 and; the affidavit of one of the Contributors, Mathew Kipkirui Koech sworn on 22<sup>nd</sup> January 2025. One of the Interested Parties, Old Mutual East Africa Holdings Limited also filed a replying affidavit to the applications, sworn by its Chairman, Clement Chinaka on 10<sup>th</sup> February 2025.
  7. The applications were canvassed by way of written and oral submissions by the parties' respective counsel and I have considered the same, together with the pleadings and I will make relevant references to them in my analysis and determination below.



## Analysis and Determination

8. Having gone through the pleadings and submissions, I propose to first deal with the Objections raised by the parties. It is not in dispute that the Company's Objection dated 16<sup>th</sup> September 2024 was dismissed in the court's ruling of 16<sup>th</sup> December 2024. Whereas counsel for the Company submitted that he was still objecting to the issue of the Petitioner's locus standi and the court's jurisdiction to determine this matter, this Objection cannot be determined as the court has already pronounced itself with finality on the said issues when it dismissed the Objection in the Ruling. Thus, the Objection cannot be revisited in this ruling as it will be akin to the court sitting on an appeal on its own decision which is not countenanced by law (see *HKN v LNW (Civil Appeal No. E452 of 2022)* [2024] KECA 437 (KLR)).
9. In any event, I find that the Company has not disputed that the Petitioner is an underlying shareholder of the Company having purchased his shares through the nominee investment company, Genghis Capital (Nominee Account No. 17) and the Petitioner has annexed evidence to that effect. This makes the Petitioner a beneficial owner of the shares in the Company under section 93A of the *Companies Act* and as such, he does possess rights over his shares which he can enforce either through the registered shareholder, Nominee No. 17, or himself if there is no objection from the Nominee Shareholder. I am persuaded that this court has the discretion to recognize beneficial shareholder interests in a Company so as to do interest between the parties even through the said beneficial shareholders are not registered in the Company as its members (see R.J Smith J., in the Ontario Divisional Court, *Behr v. 2305136 Ontario Inc.*, 2016 ONSC 5039)
10. I also find that the Petitioner's Objection to the Contributors' application dated 22<sup>nd</sup> January 2025 is now spent and is overtaken by events being that the merits of the application have been canvassed by all the parties including the Contributors, whom the Petitioner had challenged their enjoinder in this proceedings. I therefore find that it will be in the interest of justice and completeness to determine the merits of the applications rather than their competence.
11. As stated, the Petitioner's application seeks injunctive orders as per his Prayer No. 2, appointment of an interim receiver to run the affairs of the Company and that there be an advertisement to this effect and that there be an order of taking accounts and an investigation of the Company be carried out by an inspector appointed by the court.
12. For the injunction to be granted, the parties agree that the Petitioner is to demonstrate a prima facie case with a probability of success, that he will suffer irreparable injury which would not adequately be compensated by an award of damages and that if the Court is in doubt, it should decide the application on the balance of convenience. These conditions are to be applied as separate, distinct and logical hurdles which the Petitioner is expected to surmount sequentially which means that if he does not establish a prima facie case then irreparable injury and balance of convenience do not require consideration (see *Giella v Cassman Brown & Co., Ltd.* [1973] E.A. 358 and *Nguruman Limited v Jan Bonde Nielsen & 2 others* [2013] KECA 347 (KLR))
13. The parties also rightly submit that the Petitioner's first hurdle is establishing a prima facie case and to do so, he must present material before the court so as to demonstrate that there exists a right which has apparently been infringed by the Company so as to call for an explanation or rebuttal from the latter (see *Mrao Ltd v First American Bank of Kenya Ltd & 2 others* [2003] KECA 175 (KLR)).
14. The Petitioner has argued that he is apprehensive that the Company is about to dispose of various properties which threatens his right to property guaranteed by Article 40 of *the Constitution* being that he is a shareholder of the Company through the nominee account held on his behalf under Genghis



- Capital Nominee Account 17. He accuses the Company's management of fleecing the Company through procurement of purported consultancy services and that the shareholders investments are at high risk of being squandered and dissipated. He is also apprehensive that the current Board of Directors is out to snatch the Company from its minority members and shareholders, that he has never been invited to any A.G.M or shareholder meeting for the last 10 years, that the Company made various misrepresentations in its prospectus of 2012, that the original major shareholders of the Company were allowed to exit the Company through insider dealing of their shares and that the Company Directors initially sold 60.7% share to the Interested Party for USD 253 Million in January 2015 without any reference to its members, including the Petitioner
15. The Petitioner further contended that the affairs of the Company are being conducted in darkness and in an opaque manner and that no communication has been made on the current value of his shares; That on 15<sup>th</sup> October 2015, UAP Holdings Limited borrowed US Dollars 15 Million from the Interested Party and created a composite Company Guarantee and Debenture without reference to the Petitioner or other members and this amount has never been accounted for.
  16. Further, that the Directors of the Company have been appointed without any reference to the Petitioner and other minority shareholders and the Articles of Association, the code of Corporate Governance practices for issuers of security to the Public and the Capital Market Act. The Petitioner also stated that the Company has not declared and/or paid him dividends since the year 2018 and inquiries into the affairs of the Company has not been forthcoming with directors running the affairs of the Company in an opaque manner. That the Company has sold several of its Assets without reference to the minority and/or accounting for the funds to the minority shareholders and that the sales and proceeds of sale are shrouded in mystery and the Company's assets are being depleted.
  17. The Petitioner averred that the Company has not made any effort to buy back its shares from the Petitioner and that by an announcement dated 25<sup>th</sup> October 2023, the Company stated that it had agreed with one of its shareholders to convert shareholders loans worth 48,183,511 USD and a further loan of 1,927,367,952 into Equity through allotment of 1,754,572,079 preference shares of Kshs.5.00/= . The Petitioner claims that the above transaction is an unlawful attempt by the Company to water down the shareholding of the minority and amounts to fraudulent acquisition of the Company and that as at 11<sup>th</sup> April 2024, the Registrar of Companies confirmed that according to his record, the Company only had a nominal share capital of 1.1 billion shares.
  18. That in January 2024, the Company made a unilateral decision to sell its shareholding in UAP Insurance Tanzania Limited but no proper grounds were raised for the said sale nor was the Petitioner's permission as well as that of other minorities sought. He claims that the selling price of the said subsidiary was not stated, nor the reason for the said sale and that the Company has to date not remitted the sums obtained back to Kenya and has been secretive of the entire transaction.
  19. In response, the Company in opposing the application stated that the application is misconceived, frivolous and has been filed for ulterior purposes which constitutes impermissible misuse of the liquidation procedure. That the Petitioner's accusations are without any proof and that the same are made to depict the Company's Board negatively.
  20. On the Prospectus, the Company states that Nominee Account no.17, on which the Petitioner is claiming, purchased shares up to 32 months after the closing date of the Prospectus being 5<sup>th</sup> December 2012 and at prices that were up to three times higher (Kshs.200.00/= compared to Kshs.60.00/= quoted in the Prospectus) and as such, the Petitioner cannot have a valid or reasonable claim of reliance on the Prospectus. That the said third party also purchased its shares not from the Company but from various shareholders in the Over-the-Counter market. That the Prospectus stated that the Company



- “does intend” to undertake a listing by way of introduction on the NSE at “a date to be determined” and not within 2 years as averred by the Petitioner. Additionally, that the Prospectus explicitly clearly articulated that there was no immediate intention to list on the NSE and that the approval of the NSE had not been sought for admission to listing of the Offer Shares on the relevant market segment on the NSE.
21. The Company states that the references to a potential future listing in the Prospectus constituted forward-looking statements that reflected the Company’s views at that time and that intention was subject to various risks, uncertainties, and assumptions, which disclaimers were indicated in the Prospectus.
  22. The Company states that it has deferred the Listing as it has not met the listing eligibility criteria specified under the Capital Markets (Securities) (Public Offers, Listing, and Disclosures) Regulations, 2002 as amended by the 2023 Regulations as evidenced by its Annual Report & Financial Statements for the years ended 31<sup>st</sup> December 2018 to 2023 and that this decision is justified and necessary, given the myriad of adverse market conditions and regulatory challenges currently facing the insurance industry.
  23. On the exit of original shareholders, the Company submits that that all the transactions relating to the dealings in the its shares were conducted in full compliance with applicable regulations and with the utmost transparency, ensuring that the interests of all shareholders were safeguarded. That the transactions were not characterized by any elements of insider trading, but rather were strategic financial partnerships aimed at enhancing the Company’s capital structure and fostering its growth. In the circumstances, the Company states that the allegations of insider trading are false and intended to mischaracterize legitimate financial transactions undertaken by the Company and its anchor shareholders with the knowledge of CMA as the regulator.
  24. The Company confirms that two of its anchor shareholders, Bawan Limited and James Muguiyi, still remain as shareholders and hold a combined 20.4% of the Company’s shares and that the exit by some of the original anchor shareholders was a standard corporate transaction and it is normal for shareholders to leave a company. It states that the Company did not raise any objections at that time and cannot do so, 9 years later. In any case, that despite the exit of some of the anchor shareholders, the Nominee Account No. 17 continued to purchase the Petitioner’s shares long after the anchor shareholders and the Private Equity Investors had sold their shares. Therefore, it is not true that the Petitioner or anyone else has been prevented from trading in the Company’s shares.
  25. On the Petitioner’s ability to sell his shares, the Company submits that there is no law or obligation requiring any company to purchase its own shares from its shareholders and since the Petitioner purchased his shares in the secondary market, he can also sell them in the same market. That the Company has not placed any restrictions on the transfer of its shares on the OTC market and that the holder of the Nominee Account no.17 is clearly aware that such shares are unencumbered and freely transferable subject only to the rules of the [Companies Act](#) and the [Capital Markets Act](#).
  26. On the sale of the Company’s assets, the Company submits that it arrived at the decision to sell its property Title Number Nairobi/Block 31/323 (formerly Land Reference Number 209/13453 – Old Mutual Tower in an open and transparent manner, with full involvement and approval from its shareholders and in the best interests of the Company and its shareholders.
  27. On the sale of the Tanzanian subsidiary, the Company also submits that the sale was conducted transparently, with full disclosure to shareholders, and received overwhelming approval during the AGM of 25<sup>th</sup> June 2024.



28. The Company denies owning the properties L.R. No. 209/1997 & 999 (Equity Centre), L.R. No. 209/11259 (Union House), and L.R. No. 209/5535 (Orange House) or that it is in the process of selling them and that he has not provided any material in support of this allegation. The Company asserts that the said properties are not registered in its name and they have thus been wrongly included in these proceedings and accordingly, the Company cannot be accused of selling properties it does not own.
29. On the shareholders loan, the Company states that the use of the loan has been reported in the Annual Reports and financial statements from 2016 to 2023 and that these statements include notes that disclose the loans' details, the interest rates applicable, maturity, and purposes and the same are publicly available to all shareholders. Therefore, that the allegation that the loans have been unaccounted for or were taken to create additional preferential shares to the detriment of the minority shareholders is unfounded.
30. On the conversion of debt to Equity, the Company submits that this process was conducted transparently, with proper approval from the Board and shareholders during the EGM of 14<sup>th</sup> November 2023 and that all necessary notifications were provided, and the involvement of relevant regulatory bodies was secured. The Company states that the allegation that the issuance of preference shares will dilute the minority's shareholders value is incorrect as the issuance of preference shares provides greater benefit to shareholders compared with the debt which would continue to attract financing costs.
31. On invitation to the Company's AGMs, the Company depones that Notices for all AGMs and EGMs were publicly published on the Company's website and in newspapers, making them accessible to all shareholders and the public. On non-declaration of dividends, the Company states this decision was based on several factors, including the Company not reporting profits in the financial years 2018-2023 due to high finance costs and was supported by the Company's Dividends Policy and Articles. Further, these decisions not declare dividends were approved by shareholders at the AGMs held during those years but that since proper notifications were provided and the dividend policy was followed, the claim that the failure to declare dividends constitutes oppression or unfair prejudice is baseless.
32. On rebranding of the Company, the Company depones that the same was conducted transparently and with appropriate consultation with shareholders and the Petitioner's allegations to the contrary are baseless and unfounded, as this information is readily accessible online. Additionally, it states that there was no merger between UAP Holdings Limited and the Company as alleged as the company is one and the same. The correct position is that the original company known as Quadco Sixty-One Limited changed its name to UAP Holdings Limited and subsequently, after the acquisition of UAP Holdings Limited by the Majority Shareholder, it was renamed to the Company's current name.
33. On the allegation that the Company is controlled by foreigners, the Company states that its shareholders include a diverse mix of local and international investors and critical to note is that eight (8) out of the twelve (12) directors of the Company are Kenyan.
34. On the issuance of new share certificates, the Company states that under Article 18 of its Articles of Association read together with section 496 of the *Companies Act*, the law requires a company to issue a share certificate to a member within two months of the allotment of any shares. The Company confirms that, in compliance with this obligation, following the purchase of shares by Genghis Capital, the Company's share registrar, CDSC Registrars, issued share certificates to Genghis Capital for the shares acquired under Nominee Account No. 17. That once a share certificate is issued in accordance with the Articles of Association and applicable law, there is no further obligation to issue a new certificate unless there is a subsequent allotment or transfer of shares.



35. On appointment of directors, the Company states that appointment and resignation of directors are announced immediately by the company in line with the CMA regulations and are matters that were discussed by the shareholders at the various AGMs as reflected in the notices issued prior to these meetings and the resolutions passed. These appointments, along with polling results, are publicly announced in widely circulated newspapers, and the Company's website. Thus, the Company contends that the assertion that director appointments occur in secrecy without shareholder consultation is false.
36. On the valuation of the Petitioner's shares, the Company asserts that the shares held by the Nominee Account No. 17 were purchased in the OTC market based on prices agreed between willing seller and buyer and without the involvement of the Company. That it is thus unreasonable for the Petitioner to expect or require the Company to advise on the value of the shares acquired in those circumstances and that if, as the Petitioner claims, he invested through Genghis which is a sophisticated investor and advisor in the capital markets, he cannot credibly claim ignorance about the options available for trading his shares. For the above and aforementioned reasons, the Company states that the Petitioner has failed to satisfy the criteria for the granting of injunctive reliefs and that there is no cause of action that has been established against the Company and the Petitioner's claim is based on either deliberate misleading of the Court or a complete misapprehension of basic principles of company law.
37. I have carefully considered the arguments and submissions of the parties in respect of the issues raised above and whether the same are sufficient to grant an injunction at this point. It is not lost to the court that in an interlocutory application such as the present one, the Court is not required to make any conclusive or definitive findings of fact or law, most certainly not on the basis of contradictory affidavit evidence or disputed propositions of law (see *Patrick Okuku & 7 others v James Kutsushi Atindo & 8 others* [2016] KECA 580 (KLR)).
38. I do not think it is in dispute that for an order of injunction to issue, the Plaintiff is required to satisfy the conditions set out in the case of *Giella v Cassman Brown & Co., Ltd.* [1973] E.A. 358 by demonstrating a prima facie case with a probability of success, that it will suffer irreparable injury which would not adequately be compensated by an award of damages and that if the Court is in doubt, it should decide the application on the balance of convenience. These conditions are to be applied as separate, distinct and logical hurdles which the Plaintiff is expected to surmount sequentially which means that if it does not establish a prima facie case then irreparable injury and balance of convenience do not require consideration (see *Nguruman Limited v Jan Bonde Nielsen & 2 others* [2013] KECA 347 (KLR)).
39. However, as has been stated, a decision has to be made, at least on a prima facie basis, as to whether there is sufficient material to grant the injunction. A prima facie case as was described by the Court of Appeal in *Mrao Ltd v First American Bank of Kenya Ltd & 2 others* [2003] KECA 175 (KLR) 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."
40. In recognizing that the Applicant, though through a nominee account, is a shareholder and having moved the court seeking protection as a minority shareholder, I find that the Applicant has established that he has rights that are likely to be infringed if this court does not provide the protection sought herein. The Applicant has made allegations that require answers or explanations from the Company.



I find therefore, that he has established a prima facie case in line with the tenets set out in Mrao Case (supra).

41. The second test under Giella(Supra) is to determine whether, having established that the Applicant has set out a prima facie case probability of success, that he will suffer irreparable injury which would not adequately be compensated by an award of damages, if this court does not grant the injunction sought. It is not in dispute that the Respondent is a company which is a going concern and continues to operate as such and indeed holds sufficient assets. In fact, one of the prayers being sought by the Applicant is an order to stop the disposal of the Companies Assets specifically, the properties and building in Nairobi as identified in the pleadings and confirmed by the Respondent as belonging to it, during the hearing of the present application. The Respondent has subsequently urged the court to vacate the orders and allow a proposed sale of one such property being the property known as LR No. 209/13453 UAP Tower, Upper Hill Road Area of Nairobi. This court was informed during the oral submissions by the Respondents counsel that the said property is slated for sale at a price of 5.5 billion Kenya shillings to inject much needed capital to the company and offset other company loans and obligations. It is the Applicant's apprehension that the intended sale will prejudice him as a minority shareholder and the court should not permit the same as he stands to suffer loss having invested in the company through purchase of share the sum of Kshs.246,678,351.00/=. Against this background, the Applicant has demonstrated he stands to suffer a financial loss. At the exparte consideration of this matter, the court did make orders stopping the sale and or disposal of the assets of the Respondents pending the hearing and determination of application herein.
42. Having heard the arguments by the Applicant and the Respondent's reply thereto I find and hold that the Applicant has established that he stands to suffer financial loss of a substantive amount if the assets of the Company are disposed off at this stage. I am however satisfied that the loss likely to be suffered is one that can be compensated by an award of damages. The amount of damages is not a factor that can be determined at this stage of the matter but requires an examination of evidential material at the hearing of the suit on merit. To preserve the rights of the Applicant, pending the determination of the suit and balancing the same against the Respondent's need to continue to function as a going concern, this court will vacate the orders issued stopping the intended sale of the Respondents property known as LR No. 209/13453 UAP Tower, Upper Hill Road on condition that upon the conclusion of a successful sale being carried out, a sum of Kshs.500,000,000/= shall be deposited in an interest earning escrow account in the joint names of the Applicant's Legal Counsel or (Advocates) and the Respondents Legal Counsel(Advocates) and the said funds shall be held during the pendency of this suit to protect the interests of the Applicant, such that should he emerge successful after the hearing and determination of the suit herein, then there will be funds available to settle his claim therein.
43. In addition, and having heard the protestations by the Respondents, I find that there is also no evidence that has been availed to the court to confirm that the Company owns the other listed properties being L.R. No. 209/1997 & 999 (Equity Centre), L.R. No. 209/11259 (Union House), and L.R. No. 209/5535 (Orange House). The Respondent has denied their being owners of the said properties and as such therefore, no orders can be granted on the said properties.
44. It is therefore my finding that the balance of convenience also tilts towards refusing the injunction as this is not a clear-cut case and the Company, being a public company, is likely to be adversely affected in its affairs and operations are curtailed by the grant of an order of injunction and is to continue to subsist pending the determination of this Petition.
45. The Application has raised other prayers that I believe can be better addressed at the full trial of the matter before this court. Suffice it to say, the interim orders will stand vacated and the court urges the



parties to prepare to have the matter disposed with finality at a full hearing. The court declines the invitation to make any orders towards liquidation of the Company at this stage.

### **Conclusion and Disposition**

46. In the foregoing, I find that the application dated 20<sup>th</sup> August 2024 although partly merited cannot be granted as prayed. The interim orders issued by the court at the ex parte stage are vacated and discharged and the Respondents applications dated 5<sup>th</sup> September 2024 and 22<sup>nd</sup> January 2025 are partly allowed with the Respondent being allowed to proceed with intended disposal of LR No. 209/13453 UAP Tower, Upper Hill Road on condition that a sum Kshs.500,000,000/= from the sale proceeds is held in an escrow account by the Advocates for both the Applicant and the Respondent pending the hearing and determination of the suit herein.
47. Costs follow the event. The parties herein are related in that the Applicant is a shareholder of the Respondent and are each partly successful in their applications. I find therefore in the circumstances this is case where each party shall bear their own costs of this application. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 28<sup>TH</sup> DAY OF FEBRUARY 2025**

.....

**J.W.W. MONG'ARE**

**JUDGE**

In the Presence of:-

Mr. Kingara for the Petitioner/Applicant.

Ms. Ondari holding for Mr. Kamau Karori (SC)for the Defendant/Respondent.

Mr. Ndungu for the Interested Party.

Mr. Mbatai holding brief for Mr. Issa for the Contributors.

Amos - Court Assistant

