



REPUBLIC OF KENYA



KENYA LAW

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**Tupesh Energy Ltd & another v Sheikh & 2 others (Commercial Case E051 of 2024)
[2025] KEHC 1028 (KLR) (Commercial and Tax) (27 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1028 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E051 OF 2024**

PM MULWA, J

FEBRUARY 27, 2025

BETWEEN

TUPESH ENERGY LTD 1ST PLAINTIFF

ALI ADEN ISSACK 2ND PLAINTIFF

AND

MAIMUNA ADAN SHEIKH 1ST RESPONDENT

THE REGISTRAR OF COMPANIES 2ND RESPONDENT

THE HON. ATTORNEY GENERAL 3RD RESPONDENT

RULING

1. The Plaintiffs/applicants filed the Notice of Motion dated 6th February 2024 brought under Articles 48 and 165 of *the Constitution* of Kenya, Sections 1A, 1B & 3A of the *Civil Procedure Act* and Order 40 Civil Procedure Rules, which seeks the following orders:
 - i. Spent
 - ii. That pending hearing and determination of this application and the suit; an order be and is hereby issued suspending the 2nd Respondent's letter dated 5th February 2024 reinstating the 1st Respondent as a director of Tupesh Energy Limited.
 - iii. Spent
 - iv. Pending the hearing and determination of the main Suit, an order be issued restraining the 1st Respondent, her Agents, Servants, or anyone acting on her instructions from entering or purporting to carry on business at the company or on behalf of the company



- v. That pending the hearing and determination of this application and the suit, an order of injunction is issued restraining the 1st Respondent whether by herself or her representatives, servants, agents, and/or assigns from conducting any business in the name and style of Tupesh Energy Limited, to wit bank transactions and receiving any monies or business deals on behalf of the Plaintiffs.
 - vi. Costs of this application.
 - vii. Any other order that this Honourable Court may deem fit to grant in the interest of justice.
2. The application is premised on the ground on the face thereof and is supported by the affidavit sworn by Ali Issack Aden, the 2nd Plaintiff and director of Tupesh Energy Ltd on 6th February 2024 and 28th June 2024. He claims the 1st Defendant resigned from the Company on 9th December 2020, transferring her shares to him. He asserts that the changes were duly processed with the 2nd Respondent. That the recent complaint, filed after their divorce, does not accurately reflect the true situation. He asserts that the 1st Defendant attended the meeting on 9th December 2020 and signed her resignation letter.
 3. In response, the 1st Defendant filed a replying affidavit on 2nd April 2024, asserting that she was the primary force behind Tupesh Energy Ltd, having co-founded the company with her ex-husband on 5th February 2019. They were both directors with 50/50 shareholding at the time. She denied attending the meeting of 9th December, which discussed her resignation, she avers she was on maternity leave and denied signing her resignation letter.
 4. Additionally, the 2nd Respondent filed a replying affidavit on 21st February 2024, sworn by Ann Kanake, the Assistant Registrar of Companies. She explained that the 1st Defendant was reinstated as a director of the company after lodging a complaint on 31st July 2023. Following an investigation, the Registrar discovered that the advocate who signed the share transfer and resignation documents had distanced herself from them. As a result, the Registrar expunged the documents from the record and reinstated the company's shareholding status quo ante.
 5. The application was heard by way of written submissions. The Plaintiff filed submissions dated 8th July 2024, while the 1st Defendant filed submissions dated 1st November 2024.

Analysis and determination

6. Upon considering the application, the affidavits filed by the respective parties, and the submissions made, the primary issue for determination is whether the Plaintiff has made out a case for the granting of the orders sought in the application.
7. An injunction is an equitable remedy, and the principles guiding its grant are well-established in law. The Court must consider: whether there is a prima facie case with a probability of success, whether there is the risk of irreparable harm to the applicant if the injunction is not granted, and whether the balance of convenience tilts in favor of granting the injunction. These principles are set out in *Giella v Cassman Brown & Co. Ltd* (1973) EA 358.
8. In *Mrao Ltd v First American Bank of Kenya Ltd & 2 Others* [2003] KLR 125 it was held:

“So, what is a prima facie case? I would say that in civil cases it is a case in 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.”

9. Furthermore, in *Nguruman Limited v Jan Bonde Nielsen & 2 Others* (2014) eKLR, the Court clarified that if the applicant fails to establish a prima facie case, there is no need for the Court to consider the other two factors, namely irreparable harm and the balance of convenience. The rationale is that the issuance of an injunction is premised on the applicant’s ability to demonstrate a viable legal claim, and absent such a claim, the application must fail at the outset.
10. The first consideration before this court, therefore, is whether the applicant has established a prima facie case. The 2nd Plaintiff, Ali Issack Aden, contends that the 1st Defendant resigned from the company on 9th December 2020 and transferred her shares to him, with these changes duly processed and registered with the 2nd Respondent. The 2nd Plaintiff further submits that the 1st Defendant’s recent complaint, which arose after their divorce, is misleading and does not accurately reflect the state of affairs within the company.
11. In response, the 1st Defendant refutes these claims, asserting that she did not resign, did not attend the meeting on 9th December 2020, and did not sign any resignation letter. She maintains that the changes to the company’s records were made without her consent, and therefore, she disputes the claims made by the 2nd Plaintiff.
12. The 2nd Respondent, in turn, has provided their perspective, stating that, following an investigation, they found the documents submitted on behalf of the 1st Defendant were irregular. In light of this, the 2nd Respondent expunged the documents and reinstated the shareholding and directorship to their original status. While this reinstatement may have been based on the 2nd Respondent’s independent assessment, the fact that this action was taken raises legitimate concerns regarding the clarity of the 1st Defendant’s resignation status. The court must consider the weight of this evidence when determining whether a prima facie case has been established.
13. Nevertheless, the absence of the 1st Defendant from the company’s operations since 2020 may serve as circumstantial evidence of her disconnection from the company’s affairs. This aligns with the Plaintiff’s assertion that the 1st Defendant effectively resigned on 9th December 2020.
14. The 2nd Plaintiff further asserts that the 1st Defendant’s continued involvement in the company post-2020 has caused significant operational disruptions. These disturbances are said to have manifested in interference with company operations, resulting in impaired management efficiency and a negative impact on employee morale.
15. Given the 1st Defendant’s lack of participation in the company’s operations for several years, her potential re-engagement is seen as destabilizing and disruptive. Such a re-engagement could have adverse effects on the company’s overall functioning. The risk of further disruption is not merely speculative but represents a clear and present threat to the company’s future growth and stability. I therefore find that the applicant has established a prima facie case.
16. The second limb under the *Giella* case (*supra*) requires the applicant to demonstrate that it will suffer irreparable harm if the injunction is not granted. In this case, the interference by the 1st Defendant is presented as an imminent threat to the company, endangering its operational stability and its reputation within the industry. Should this interference continue, it could lead to significant financial losses and long-term damage to the company’s market standing.
17. I am of the considered view that monetary damages alone will not provide an adequate remedy for the ongoing disruptions caused by the 1st Defendant’s actions. The harm being inflicted upon the



company, particularly in terms of its operational efficiency and reputation, cannot be quantified in purely financial terms. I thus find the applicant has surmounted the second hurdle.

18. Based on the evidence presented, it is clear that the company faces a significant risk of irreparable harm due to the 1st Defendant's actions. The disruption to operations, the potential for financial losses and the damage to the company's reputation are all compelling grounds for granting an injunction. The balance of convenience therefore tilts in favor of the applicant.
19. In light of the foregoing, I am of the considered view that an injunction would serve as a necessary and proportionate remedy to prevent further interference and restore stability to the company's operations. Therefore, I find the applicant has met the threshold for grant of temporary injunction.
20. In conclusion, I find that the Notice of Motion application dated 6th February 2024 has merit and the same is allowed in terms of prayer Nos. 5, 6 and 7. Costs shall be in the cause.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 27TH DAY OF FEBRUARY 2025.

PETER M. MULWA

JUDGE

In the presence of:

Ms. Masaki for Plaintiff/applicant

Mr. Otieno for 1st Defendant/respondent

N/A for 2nd & 3rd Defendants

Court Assistant: Carlos

