



Gheewal (Suing as the Executrix of the Estate of Chandrakant Shamjibhai Gheewala) & 2 others v Gheewala (Commercial Case E071, E072, E073, E074, E076 & E077 of 2024 (Consolidated)) [2025] KEHC 4224 (KLR) (Commercial and Tax) (28 March 2025) (Ruling)

Neutral citation: [2025] KEHC 4224 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E071, E072, E073, E074, E076 & E077 OF 2024 (CONSOLIDATED)
MN MWANGI, J
MARCH 28, 2025
IN THE MATTER OF HOUSING SCHEMES LIMITED
-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 HOUSING SCHEMES LIMITED

BETWEEN

MUKTA CHANDRAKANT GHEEWAL (SUING AS THE EXECUTRIX OF THE ESTATE OF CHANDRAKANT SHAMJIBHAI GHEEWALA) 1ST PLAINTIFF
SHRIKESH GHEEWALA 2ND PLAINTIFF
MAMTA GHEEWALA 3RD PLAINTIFF

AND

ELESHKUMAR CHANDRAKANT GHEEWALA DEFENDANT

RULING

1. This ruling is in respect to six applications, all filed pursuant to the provisions of Sections 1A, 1B, 3A & 63(e) of the *Civil Procedure Act*, Order 51 Rule 1 of the Civil Procedure Rules, 2010 and Sections 780 & 782 of the *Companies Act* No. 17 of 2015. The plaintiffs/applicants seek orders of temporary injunction restraining the defendants either directly or indirectly from calling or holding



any general meeting of Housing Schemes Limited, Nyacity Limited, Rural Housing Estates Limited, Cassava Plantations Limited, Santack Enterprises Limited & Associated Securities Limited, without the plaintiffs' consent or further Court orders and purporting to exercise majority shareholder rights or interfering with the said companies' management, operations, and affairs without the plaintiffs' approval or Court orders. The six applications were all canvassed by way of written submissions.

HCComm E071/2024 – Housing Schemes Limited

2. The application in the above suit is dated 17th February, 2024. It is premised on the grounds on the face of the Motion, and it is supported by affidavits sworn on the same day by Mr. Shrikesh Gheewala, Mrs Mukta Chandrakant Gheewala & Ms Mamta Gheewala, the plaintiffs herein.
3. Mr. Shrikesh averred that the 1st plaintiff is the Executrix of the will of the late Chandrakant Shamjibhai Gheewala, whereas the 3rd plaintiff and the 1st defendant are beneficiaries of the said estate. He contended that the dispute herein concerns Housing Schemes Limited, in which the deceased held majority shares, but the defendant despite holding no shares, has unilaterally attempted to convene an AGM via a Notice published on 30th January 2024 in violation of the Companies Act and the Articles of Association of Housing Schemes Limited. He asserted that the said Notice was defective due to non-compliance with legal requirements, lack of proper notification to members, and failure to follow due corporate procedures. Mr. Shrikesh stated that a 2019 Mediation Settlement Agreement which was later adopted by the Court awarded the 3rd plaintiff full shareholding of the said company, though formal shares' transfer remains pending due to delays caused by the defendant's litigation.
4. Mrs Mukta Gheewala & Ms Mamta on the other hand averred that they are beneficial owners of shares in Housing Schemes Limited, and members of the said company under Section 284 of the Companies Act and beneficiaries of the estate of the late Chandrakant Shamjibhai Gheewala. They confirmed having authorized Mr. Shrikesh Gheewala to swear the supporting affidavit and fully aligned themselves with its contents, and adopted the said affidavit.
5. In opposition to the application, the defendant herein, Mr. Eleshkumar Chandrakant Gheewala, the defendant herein, filed a replying affidavit sworn on 6th March 2024. He averred that as a Director of Housing Schemes Limited, he had to convene the company's Annual General Meeting due to the 2nd plaintiff's consistent failure to attend meetings, which has hindered decision-making and financial accountability, including unreported rent collections. He asserted that he followed due process in notifying the plaintiffs of the Annual General Meeting via registered mail, a Court Process Server, and a Newspaper advertisement.
6. In a rejoinder, the plaintiffs filed a further affidavit sworn on 11th March 2024 by Mr. Shrikesh Gheewala, the 2nd plaintiff herein. The plaintiffs denied receipt of registered mail or personal service of the Notice of the Annual General Meeting. Mr. Shrikesh asserted that the only Notice received was via a Newspaper advertisement, which he claimed was defective for failing to comply with the Companies Act.
7. The plaintiffs' submissions were filed on 11th March 2024 by the law firm of Kimamo Kuria Advocates, while the defendant's submissions were filed by the law firm of Nyaanga & Mugisha Advocates on 14th March 2025 & 31st May 2024.
8. Mr. Kimamo Kuria, learned Counsel for the plaintiff relied on the case of Njoroge Macharia & another v Registrar of Companies & another Ex-Parte & another [2017] eKLR, and submitted that the Notice for the Annual General Meeting was defective since the defendant who is not a shareholder of Housing Schemes Limited, had no legal right to convene the said Meeting. Counsel cited the case of Auto Japan



- (Mombasa) Limited v Malik Ali Zaka & 2 others [2021] eKLR, and submitted that the said Notice was defective as it provided only 20 days' Notice instead of the required 21 days, contrary to the provisions of Section 281(1) of the *Companies Act*. He argued that the law mandates that the Notice period must exclude both the day of service and the meeting date.
9. Counsel argued that as per the Mediation Settlement Agreement of 31st July 2019 in Succession Cause No. 264 of 1994, which was adopted as a Court Order on 16th October 2019, the 3rd plaintiff is the beneficial owner of 100% of the shares in Housing Schemes Limited. Counsel asserted that the company's shares are held in trust for the 3rd plaintiff until they are fully transferred to her. He relied on the case of Mrao Ltd v First Assurance Bank of Kenya [2003] KLR 125 cited by the Court in Florence Kyayanga Musanga v Transnational Bank Ltd & another [2020] eKLR, and submitted that the plaintiffs have established a prima facie case with a probability of success.
 10. He also cited the case of Banis Africa Ventures Limited v National Land Commission [2021] eKLR, and submitted that the plaintiffs are apprehensive that until the shares are fully transferred to the 3rd plaintiff, the defendant may continue to convene irregular meetings, appoint Directors unlawfully, or dispose of company assets without their consent, causing the plaintiffs and the company to suffer irreparable harm that cannot be adequately compensated in damages.
 11. Mr. Nyaanga, learned Counsel for the defendant relied on the case of Giella v Cassman Brown & Company Limited [1973] EA 358, and submitted that the plaintiffs have not met the threshold for being granted the orders sought. He argued that the defendant is the rightful majority shareholder and Director of the Housing Schemes Limited based on the 2012 Annual Return and the Court Order of 16th October 2019, which confirmed the share distribution. Counsel contended that the defendant lawfully convened the Annual General Meeting in question under Section 279 of the *Companies Act*, having served the plaintiffs via registered post, attempted personal service, and ultimately through a Newspaper advertisement. He contended that the defendant's actions were necessary to prevent the paralysis of the said company's affairs due to the 2nd plaintiff's refusal to attend meetings.
 12. Counsel asserted that granting the plaintiffs the orders sought would unjustly strip the defendant of his shareholder rights and paralyze the operations of Housing Schemes Limited. Mr. Nyaanga relied on the Court of Appeal case of Pacific Frontier Seas Ltd v Kyengo & another [2022] KECA 396 (KLR), and stated that the company is a separate legal entity from its shareholders, thus the estate of a deceased shareholder is only entitled to shares, not control of the company. He submitted that the plaintiffs have not established a prima facie case to warrant being granted the orders sought. Mr. Nyaanga argued that the plaintiffs have not demonstrated that they would suffer irreparable harm if the orders being sought are not granted. He stated that the balance of convenience tilts in favour of the 1st defendant.
 13. In a rejoinder, Mr. Kimamo Kuria submitted that under Section 584(2) of the *Companies Act*, the plaintiffs are entitled to receive Notices for Annual General Meetings as beneficiaries of the deceased's shares. He contended that convening a Meeting requires at least 5% shareholding, making majority shareholding irrelevant. Additionally, he asserted that the defendant is not a legal majority shareholder but merely holds the majority shares in trust.

HCComm E072/2024 – Nyacity Limited

14. The application in the above suit is dated 17th February, 2014. It is premised on the grounds on the face of the Motion, and it is supported by affidavits sworn on the same day by Mr. Shrikesh Gheewala, Mrs Mukta Chandrakant Gheewala & Ms Mamta Gheewala, the plaintiffs herein.



15. Mr. Shrikesh averred that the 1st plaintiff is the Executrix of the will of the estate of the late Chandrakant Shamjibhai Gheewala, whereas the 2nd & 3rd plaintiffs, and the defendant are beneficiaries of his estate. He contended that the defendant as the majority shareholder of Nyacity Limited, which shares were obtained fraudulently through irregular share transfers and allotments, has misused his position. Mr. Shrikesh claimed that the defendant transferred the deceased's shares to himself without following proper succession procedures and further allotted himself 300 additional shares, diluting the estate's stake.
16. Mr. Shrikesh alleged that the defendant issued a defective Notice for an Annual General Meeting scheduled for 20th February 2024, without complying with legal requirements. He stated that they are apprehensive that the defendant will use his majority position to pass resolutions that may further harm the estate of the deceased and facilitate irregular transactions, as he has previously done in other related companies, including unauthorized appointments and asset disposals.
17. Mrs Mukta Gheewala & Ms Mamta averred that they are beneficial owners of Nyacity Limited, and members of the said company under Section 284 of the *Companies Act* and beneficiaries of the estate of the late Chandrakant Shamjibhai Gheewala. They confirmed having authorized Mr. Shrikesh Gheewala to swear the supporting affidavit and fully aligned themselves with its contents, and adopted the same as their own.
18. In opposition to the application, the defendant herein, Mr. Eleshkumar Chandrakant Gheewala, filed a replying affidavit sworn on 6th March 2024. He averred that the 2nd plaintiff is not a shareholder of Nyacity Limited but he is a Director who has repeatedly failed to attend Board meetings, thereby stalling the company's decision-making and preventing it from conducting Annual General Meetings since 2018. That as a result, he convened an Annual General Meeting after following due process which involved issuing Notices via registered post, personal service and a Newspaper advertisement. Mr. Eleshkumar denied the plaintiffs' allegations of illegality and wrongful allotment of shares, and asserted that all company decisions were made as per the Articles of Association of Nyacity Limited and the law.
19. In a rejoinder, the plaintiffs filed a further affidavit sworn on 11th March 2024 by Mr. Shrikesh Gheewala, the 2nd plaintiff herein. He contended that the Notice issued by the defendant for an Annual General Meeting was defective as it did not comply with statutory requirements and failed to provide for the mandatory 21-days' Notice and that a key shareholder was omitted.
20. The plaintiffs' submissions were filed on 11th March 2024 by the law firm of Kimamo Kuria Advocates, while the defendant's submissions were filed by the law firm of Nyaanga & Mugisha Advocates on 14th March 2025. Upon consideration of the said submissions, I note that Counsel for the parties in this suit regurgitated the submissions they made in HCComm No. E071 of 2024.
21. Mr. Kimamo Kuria, learned Counsel for the plaintiff submitted that although Nyacity Limited is not part of the Mediation Settlement Agreement, it remains part of the deceased's estate, thus entitling the plaintiffs to Notices of any Annual General Meetings under Section 284(2) of the *Companies Act*. He argued that the said Company forms part of the estate of the late Chandrakant Shamjibhai Gheewala, a fact not disputed by the defendant.
22. Counsel contended that given the plaintiffs claimed beneficial interest in the company's shareholding, they have established a prima facie case with a probability of success. He asserted that the plaintiffs are apprehensive that until the shareholding dispute is resolved, the defendant may misuse his majority shareholding position held in trust, to appoint Directors or pass resolutions to their detriment, which could lead to the sale of assets worth Billions of shillings, causing irreparable loss to the plaintiffs.



23. Mr. Nyaanga, learned Counsel for the defendant submitted that the defendant does not hold shares in the company in trust for the deceased's estate. He stated that the defendant legally acquired the said shares as an adult while the plaintiffs were minors. Counsel contended that no evidence had been presented to prove the alleged trust arrangement. He asserted that the defendant rightfully holds 300 shares in his name, making him the company's majority shareholder. Counsel maintained that the defendant has been a Director of Nyacity Limited for years without any misconduct, and no evidence had been provided to challenge the claim.

HCComm E073/2024 – Rural Housing Estates Limited

24. The application in the above suit is dated 17th February, 2024. It is was premised on the grounds on the face of the Motion, and it is supported by affidavits sworn on the same day by Mr. Shrikesh Gheewala, Mrs Mukta Chandrakant Gheewala & Ms Mamta Gheewala, the plaintiffs herein.

25. Mr. Shrikesh averred the 1st plaintiff is the Executrix of the will of the late Chandrakant Shamjibhai Gheewala, whereas the 2nd & 3rd plaintiffs as well as the defendant are beneficiaries of his estate. He contended that the defendant as a majority shareholder of the said company by virtue of holding it in trust for the estate of the deceased and for the 3rd plaintiff, fraudulently and irregularly transferred and allotted company shares to himself, diluting the estate's shareholding. He asserted that a Mediation Settlement Agreement which was subsequently adopted as a Court Order already determined the rightful distribution of shares, making the defendant's unilateral actions unlawful.

26. Mrs Mukta & Ms Mamta Gheewala averred that they are beneficial owners of 37 % of the shareholding of Rural Housing Estates Limited, members of the said company under Section 284 of the *Companies Act* and beneficiaries of the estate of the late Chandrakant Shamjibhai Gheewala. They confirmed having authorized Mr. Shrikesh Gheewala to swear the supporting affidavit. They fully aligned themselves with its contents and adopted the same as their own.

27. In opposition to the application, the defendant herein, Mr. Eleshkumar Chandrakant Gheewala filed a replying affidavit sworn on 6th March 2024. He stated that the 2nd plaintiff, a non-shareholding Director, has consistently failed to attend meetings, thereby hindering decision-making. Mr. Eleshkumar alleged that the 2nd plaintiff withheld financial records, failed in legal duties, and neglected company obligations, and that despite multiple notifications, the 2nd plaintiff refused to participate, in the affairs of Rural Housing Estates Limited, leading the defendant to convene an overdue Annual General Meeting. He claimed that due process was followed in serving Notices, including personal service attempts and Newspaper advertisements. He denied the plaintiffs' allegations of abuse of office and manipulation of shares, and asserted that shareholding is as per company records and ongoing rectification proceedings.

28. In a rejoinder, the plaintiffs filed a further affidavit sworn on 11th March 2024 by Mr. Shrikesh Gheewala, the 2nd plaintiff herein. He averred that the only valid service for the Notice of the company's Annual General Meeting was through a Newspaper advertisement on 30th January 2024, which service was defective due to non-compliance with the *Companies Act*, including failure to provide proper Notice, omission of the 3rd plaintiff as a beneficiary, and procedural irregularities in issuing the said Notice.

29. The plaintiffs' submissions were filed on 11th March 2024 by the law firm of Kimamo Kuria Advocates, while the defendant's submissions were filed by the law firm of Nyaanga & Mugisha Advocates on 14th March 2025. Upon consideration of the said submissions, I note that Counsel for the parties in this suit regurgitated the submissions they made in HCComm No. E071 of 2024.



30. Mr. Kimamo Kuria, learned Counsel for the plaintiffs submitted that under the Mediation Settlement Agreement, the 2nd & 3rd plaintiffs are the beneficial owners of 74% of Rural Housing Estates Limited, making them majority shareholders and as such, the defendant should be restrained from disregarding their stake. He argued that there is a substantive dispute on whether the defendant holds the majority shareholding in trust or absolutely, and until the said issue is resolved, the plaintiffs fear potential misuse of the defendant's position, including appointing Directors or passing resolutions without their consent. Counsel stated that allowing such actions could lead to the sale of assets worth KShs.1,000,000,000/=, causing irrecoverable loss to the plaintiffs.
31. Mr. Nyaanga, learned Counsel for the defendant submitted that at the time of the passing on of his father, the defendant was 27 years old while the 2nd & 3rd plaintiffs were minors, thus the defendant had the capacity to hold shares in his own name. Counsel further submitted that no evidence had been presented to prove that the shares in issue were held in trust. He submitted that the defendant holds 3,300 shares in the Rural Housing Estates Limited in his own name, making him the majority shareholder.

HCComm E074/2024 – Cassava Plantations Limited

32. The application in the above suit is dated 17th February 2024. It is premised on the grounds on the face of the Motion, and it is supported by affidavits sworn on the same day by Mr. Shrikesh Gheewala, Mrs Mukta Chandrakant Gheewala & Ms Mamta Gheewala, the plaintiffs herein.
33. Mr. Shrikesh averred the 1st plaintiff is the Executrix of the will of the late Chandrakant Shamjibhai Gheewala, whereas the 2nd & 3rd plaintiffs as well as the defendant are beneficiaries of the estate of the deceased. He contended that the shares for Cassava Plantations Limited are held in trust for the estate of the late Chandrakant Shamjibhai Gheewala and his beneficiaries by the defendants. The plaintiffs claimed that the 1st defendant has abused his majority shareholder position, made fraudulent share transfers, and attempted to convene an Annual General Meeting in violation of legal requirements. Mr. Shrikesh stated that a Mediation Settlement Agreement that was later adopted as a Court Order determined the shareholding distribution.
34. Mrs Gheewala Mukta & Ms Mamta averred that they are beneficial owners of Cassava Plantations Limited, members of the said company under Section 284 of the *Companies Act* and beneficiaries of the estate of the late Chandrakant Shamjibhai Gheewala. They confirmed having authorized Mr. Shrikesh Gheewala to swear the supporting affidavit and fully aligned themselves with its contents. They adopted the same as their own.
35. In opposition to the application, the defendant herein, Mr. Eleshkumar Chandrakant Gheewala filed a replying affidavit sworn on 6th March 2024. He averred that the 2nd plaintiff though a Director, is not a shareholder of Cassava Plantations Limited and has failed to attend meetings, thereby hindering the company's operations. He asserted that due process was followed in convening an Annual General Meeting of the said company after years of inaction due to the 2nd plaintiff's negligence. He stated that attempts were made to notify the plaintiffs of the Annual General Meeting via registered post, personal service, and Newspaper advertisement. Mr. Eleshkumar denied the plaintiffs' allegations of misconduct and asserted that shareholding is accurately reflected in official company records.
36. The 2nd defendant, Santack Enterprises Ltd filed a replying affidavit sworn on 11th March 2024 by Mr. Eleshkumar Chandrakant Gheewala, the Chairman, Director and shareholder of the said company. He averred that the plaintiffs have not provided proof that majority shareholders of the company misused their position or hold shares in trust for the estate of the late Chandrakant Shamjibhai Gheewala, or



- the plaintiffs. He asserted that Cassava Plantations Limited operates as a separate legal entity from any individual or estate. He referred the Court to the said company's CR-12 and stated that it confirms the plaintiffs are not shareholders of the said company.
37. Mr. Eleshkumar stated that Cassava Plantations Limited has not been able to hold Annual General Meetings as per Section 275A of the *Companies Act* over the past five years due to internal disputes caused by the 2nd plaintiff. He stated that he convened an Annual General Meeting following legal provisions, and a Notice of the said meeting was issued in compliance with Sections 281, 284 & 285 of the *Companies Act*. Mr. Eleshkumar contended that the Mediation Settlement Agreement referred to by the plaintiff has no bearing on the ownership or management of Santack Enterprises Ltd. He asserted that the plaintiffs' claims are unsupported by evidence and consist of unproven statements and hearsay.
 38. In a rejoinder, the plaintiffs filed a further affidavit sworn on 11th March 2024 by Mr. Shrikesh Gheewala, the 2nd plaintiff herein. He contended that the 1st defendant's actions were fraudulent, leading to an unfair distribution of shares which must be resolved before any Annual General Meeting can take place.
 39. The plaintiffs' submissions were filed on 11th March 2024 by the law firm of Kimamo Kuria Advocates, and the 1st defendant's submissions were filed by the law firm of Nyaanga & Mugisha Advocates on 14th March 2025. The 2nd defendant's submissions were filed on 28th June 2024 by the law firm of Ike Owiti & Company Advocates. On perusal of the said submissions, I note that Counsel for the plaintiffs and the 1st defendant in this suit regurgitated the submissions they made in HCComm No. E071 of 2024 & HCComm No. E073 of 2024.
 40. Mr. Kimamo Kuria, learned Counsel for the plaintiff submitted that the defendant admitted to not sending a Notice for the Annual General Meeting of 20th February 2024 to the 3rd plaintiff, rendering the Notice defective under Section 284(2) of the *Companies Act*. He emphasized that as per the Mediation Settlement Agreement, the 2nd & 3rd plaintiffs are the beneficial majority shareholders of 65% of the company and should not be disregarded.
 41. Mr. Nyaanga, learned Counsel for the 1st defendant submitted that the said defendant holds one share in Cassava Plantations Limited and is the majority shareholder of Santack Enterprises Limited, which owns 17 shares in Cassava Plantations Limited. Additionally, he submitted that as the largest shareholder in Nyacity Limited which holds 62498 shares in Santack Enterprises, the 1st defendant is the majority shareholder in Cassava Plantations Limited.
 42. Mr. Owiti, learned Counsel for the 2nd defendant submitted that since Cassava Plantations Limited had not held an Annual General Meeting for five years, the 1st defendant, as a Director, lawfully called an Annual General Meeting under Section 276 of the *Companies Act*, by issuing Notices as required. He further submitted that the 3rd plaintiff was not notified of the said meeting as Cassava plantations Limited was never informed of her entitlement to the deceased's shares. Counsel relied on the case of *Foss v Harbottle* [1848] 2 Hare 261 and argued that Courts should not interfere in the management of companies unless actions taken are ultra vires, fraudulent, or unrectifiable by resolution.
 43. He urged this Court to compel Cassava Plantations Limited to convene an Annual General Meeting under Section 280 of the *Companies Act*, asserting that the plaintiffs provided no evidence of a change in shareholding. He contended that the said company's records and the CR-12 do not reflect any such changes. He noted that the said company was never part of the succession case. Mr. Owiti relied on the case of *Giella v Cassman Brown & Company Ltd* (supra) and argued that the plaintiffs had failed to establish a prima facie case and should raise their concerns at the Annual General Meeting rather than



seek to halt it. To buttress his submissions, Counsel relied on the case of Seruji Limited v Savannah Cement Limited; Savannah Heights Ltd (Interested Party) (Miscellaneous Application E445 of 2021) [2021] KEHC 26 (KLR).

44. In a rejoinder, Mr. Kimamo Kuria submitted that the 2nd defendant herein, Santack Enterprises Ltd was not part of the succession cause as it is a holding company. For that reason, it was not mentioned in the Mediation Settlement Agreement.

HCComm E076/2024 – Santack Enterprises Ltd

45. The application in the suit above is dated 17th February 2024. It is premised on the grounds on the face of the Motion, and it is supported by affidavits sworn on the same day by Mr. Shrikesh Gheewala, Mrs Mukta Chandrakant Gheewala & Ms Mamta Gheewala, the plaintiffs herein.
46. Mr. Shrikesh averred the 1st plaintiff is the Executrix of the will of the late Chandrakant Shamjibhai Gheewala, while the 2nd & 3rd plaintiffs as well as the defendant are beneficiaries of the deceased's estate. He further averred that the 1st defendant misused his majority shareholder position in Santack Enterprises Limited, which he obtained fraudulently and irregularly by unlawfully transferring the deceased's shares to himself without undergoing the succession processes. Additionally, the plaintiffs contended that the 1st defendant irregularly issued and allotted new shares to himself and the 2nd defendant, thus diluting the deceased's shareholding.
47. Mr. Shrikesh deposed that the shares held by the defendants are in trust for the deceased estate's beneficiaries. He claimed that despite being legally recognized members of Santack Enterprises Ltd under the *Companies Act*, the plaintiffs were excluded from a defective Notice for an Annual General Meeting published on 30th January 2024, for a Meeting that was scheduled for 20th February 2024, which was invalid due to several legal and procedural breaches, including an inadequate Notice period, failure to notify all members, and lack of a valid Board resolution.
48. Mrs Mukta Gheewala & Ms Mamta averred that they are beneficial owners of the shareholding of Santack Enterprises Limited, members of the said company under Section 284 of the *Companies Act* and beneficiaries of the estate of the late Chandrakant Shamjibhai Gheewala. They confirmed having authorized Mr. Shrikesh Gheewala to swear the supporting affidavit and fully aligned themselves with its contents. They adopted the same as their own.
49. In opposition to the application, the 1st defendant herein filed a replying affidavit sworn on 6th March 2024. He stated that the 2nd plaintiff, though a Director, is not a shareholder of Santack Enterprises Limited and has repeatedly failed to attend meetings, thus hindering the company's operations. That due to the said failure, Annual General Meetings have not been held since 2018. The 1st defendant further stated that to address this, as a shareholder and Director of the company, he convened an Annual General Meeting, duly notifying the plaintiffs through registered post, personal service, and Newspaper advertisement. He denied the plaintiffs' allegations of fraud and mismanagement, and stated that all actions were in accordance with the law and the said company's Articles of Association.
50. The 2nd defendant filed a replying affidavit sworn on 11th March 2024 by Mr. Eleshkumar Chandrakant Gheewala, the Chairman, Director and shareholder of Nyacity Limited, the 2nd defendant herein. He stated that the plaintiffs have not adduced evidence of misuse or abuse of majority shareholder powers, nor evidence that the shares of Santack Enterprises Limited are held in trust for the estate of the deceased and the plaintiffs. He asserted that the said company's CR-12 confirms that the plaintiffs are not its shareholders.



51. Mr. Eleshkumar averred that Santack Enterprises Limited has not been able to hold Annual General Meetings for five years due to internal conflicts and disruptions by the plaintiffs. He stated that the 1st defendant being a Director and shareholder of the said company convened an Annual General Meeting and issued a valid Notice in compliance with the Companies Act. He further averred that the 2nd plaintiff was issued with a Notice, but the 3rd plaintiff was not entitled to one as she is neither a shareholder nor legally recognized as inheriting shares in the said company.
52. In a rejoinder, the plaintiffs filed a further affidavit sworn on 11th March 2024 by Mr. Shrikesh Gheewala, the 2nd plaintiff herein. He stated that the Notice for the Annual General Meeting issued by the 1st defendant was defective for failing to comply with legal provisions, including improper Notice periods and failure to notify all entitled parties.
53. The plaintiffs' submissions were filed on 11th March 2024 by the law firm of Kimamo Kuria Advocates, and the 1st defendant's submissions were filed by the law firm of Nyaanga & Mugisha Advocates on 14th March 2024. The 2nd defendant's submissions were filed on 28th June 2024 by the law firm of Ike Owiti & Company Advocates. Upon consideration of the said submissions, I note that Counsel for the plaintiffs and the 1st defendant in this suit regurgitated the submissions they made in HCComm No. E071 of 2024, HCComm No. E073 of 2024 & HCComm No. E074 of 2024. Counsel for the 2nd defendant regurgitated the submissions he made in HCComm No. E074 of 2024.
54. Mr. Kimamo Kuria, learned Counsel for the plaintiffs submitted that although the shares in Santack Enterprises Limited were not listed in the Mediation Settlement Agreement, they remain part of the deceased's estate, in which the plaintiffs have an identifiable stake as beneficiaries.
55. Mr. Nyaanga, learned Counsel for the 1st defendant submitted that the 1st defendant has acted in the best interest of the company, unlike the 2nd plaintiff who refuses to attend meetings and misuses the Court process when dissatisfied. Counsel maintained that calling the Annual General Meeting was necessary to prevent paralysis of the company's operations. He contended that granting the plaintiffs the orders being sought herein, would indefinitely halt the company's affairs.
56. In a rejoinder, Mr. Kimamo Kuria submitted that the 2nd defendant was not part of the succession cause as it is a holding company, and for that reason, it was not mentioned in the Mediation Settlement Agreement.

HCComm E077/2024 – Associated Securities Limited

57. The application in the above suit is dated 17th February, 2024. It is premised on the grounds on the face of the Motion, and it is supported by affidavits sworn on the same day by Mr. Shrikesh Gheewala, Mrs Mukta Chandrakant Gheewala & Ms Mamta Gheewala, the plaintiffs herein.
58. Mr. Shrikesh averred that the 1st plaintiff is the Executrix of the will of the late Chandrakant Shamjibhai Gheewala, while the 2nd & 3rd plaintiffs together with the defendant are beneficiaries of the deceased's estate. He further averred that Associated Securities Limited was incorporated by the deceased who owned several businesses. He deposed that the said company as per the latest CR-12 dated 16th February 2024 lists various family members as shareholders, but share transfers have occurred, making the 3rd plaintiff the beneficial owner of all the company's shares under a Mediation Settlement Agreement dated 31st July 2019, which was adopted as a Court Order on 16th October 2019. He stated that due to several litigation by the defendant, these transfers have not been officially updated.
59. Mr. Shrikesh asserted that despite being a minority shareholder, the defendant issued a Notice on 30th January 2024 convening an Annual General Meeting for 20th February 2024. Mr. Shrikesh however



claimed that the said Notice is defective due to non-compliance with the Companies Act and the Articles of Association of Associated Securities Limited, including inadequate Notice period, failure to properly notify shareholders, and lack of a Board resolution.

60. In opposition to the application, the defendant filed a replying affidavit sworn on 6th March 2024 by Mr. Eleshkumar Chandrakant Gheewala. He stated that the 2nd plaintiff is a Director but not a shareholder of Associated Securities Limited, and that he had failed to attend Directors' meetings, thereby preventing decision-making. The defendant claimed that the 2nd & 3rd plaintiffs withdrew USD 1,500,000.00 from the said company without Board approval and executed a fictitious management contract to personally collect rent. He averred that due to the 2nd plaintiff's negligence, the company has not held an Annual General Meeting since 2018, forcing him to convene one. Mr. Eleshkumar asserted that proper Notice was given for the said Annual General Meeting through registered mail, personal service and Newspaper advertisement.
61. In a rejoinder, the plaintiffs filed a further affidavit sworn on 11th March 2024 by Mr. Shrikesh Gheewala, the 2nd plaintiff herein. He stated that the defendant misused a Power of Attorney after their father's death in 1984, and fraudulently allotted shares to himself, leading to an unfair advantage in company matters.
62. The plaintiffs' submissions were filed on 11th March 2024 by the law firm of Kimamo Kuria Advocates, whereas the defendant's submissions were filed by the law firm of Nyaanga & Mugisha Advocates on 14th March 2025. Upon perusal of the said submissions, I note that Counsel for the parties in this suit regurgitated the submissions they made in HCComm No. E071 of 2024, HCComm No. E073 of 2024 & HCComm No. E074 of 2024.
63. Mr. Kimamo Kuria, learned Counsel for the plaintiffs submitted that the Mediation Settlement Agreement declared the shares in Associated Securities Limited as part of the estate of the late Chandrakant Shamjibhai Gheewala, granting 100% ownership of the said shares to the 3rd plaintiff. He asserted that since the 3rd plaintiff is the sole beneficial owner and majority shareholder of the said company, the defendant should be restrained from disregarding her authority in the said company. Counsel contended that the plaintiffs have established a prima facie case to warrant being granted of the orders being sought herein.
64. Mr. Nyaanga, learned Counsel for the 1st defendant submitted that the shareholding of Associated Securities Limited is as per the 2012 Annual Return which shows that the defendant holds 111 shares, while the 1st plaintiff held 142 shares on behalf of the deceased's estate. The defendant deposed that the 1st plaintiff relinquished these shares as per the Court Order of 16th October 2019, distributing them in a 10:8:7 ratio, with the defendant receiving the largest portion, making him the majority shareholder of Associated Securities Limited.

Analysis and Determination.

65. I have considered of the applications herein, the grounds on the face of the Motions, and the affidavits filed in support thereof. I have also considered the replying affidavits by the defendants and the written submissions filed by Counsel for the parties. The issue that arises for determination is whether the orders of temporary injunction being sought by the plaintiffs herein, should be granted.
66. Interlocutory injunctions are provided for under Order 40 Rules (1)(a) and (b) of the Civil Procedure Rules, 2010 which states that –

Where in any suit it is proved by affidavit or otherwise-



- a. that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or
- b. that the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit, the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the Court thinks fit until the disposal of the suit or until further orders.

67. It is trite that an injunction is a discretionary remedy and it is granted on the basis of sound evidence and the applicable legal principles. The principles to be considered by Courts when dealing with interlocutory injunction applications were laid down by the Court in *Giella v Cassman Brown and Co. Ltd* (supra) as hereunder -

Firstly, 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 might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the Court is in doubt, it will decide an application on the balance of convenience.

68. The Court of Appeal in the case of *Mrao Ltd v First American Bank of Kenya Ltd & 2 others* [2003] eKLR, defined what constitutes a prima facie case as follows –

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. A prima facie case is more than an arguable case. It is not sufficient to raise issues but the evidence must show an infringement of a right, and the probability of success of the Applicant's case upon trial. That is clearly a standard, which is higher than an arguable case.

69. The dispute between the parties herein is largely as to whether the defendant, Mr. Eleshkumar Chandrakant Gheewala has the right to convene Annual General Meetings for the six companies in issue, whether he can exercise majority shareholder rights in the said companies, and whether he can manage the affairs of the companies without the plaintiffs' consent.

Housing Schemes Limited.

70. It is not disputed that the defendant is not a shareholder of the said company but he is a Director alongside the 2nd plaintiff. It is trite that pursuant to Section 276 of the *Companies Act*, Directors of a company have the power to convene a General Meeting of the company. Since Housing Schemes Limited has only two Directors as per its CR-12 dated 16th February 2024 annexed to the plaintiffs' supporting affidavit, the defendant could only convene an Annual General Meeting of Housing Schemes Limited with the consent of the 2nd plaintiff.

71. The defendant submitted that he is the rightful majority shareholder and Director of the company based on the 2012 Annual Return and the Court Order of 16th October 2019, which confirmed the share distribution, thus he lawfully convened the Annual General Meeting in question under Section



279 of the *Companies Act*. Upon perusal of the CR-12 dated 16th February 2024, the defendant is however not a shareholder in Housing Schemes Limited. Further on perusal of the Court Order of 16th October 2019, which has neither been varied and/or set aside, it is evident that the 3rd plaintiff is the beneficial owner of all of the deceased's shares in Housing Schemes Limited.

72. Section 279(1) of the *Companies Act* provides the following-

If, after having been required to convene a general meeting under section 277, the Directors fail to do as required by section 278, the members who requested the meeting, or any of them representing more than one half of the total voting rights of all them, may convene a general meeting.

73. Given the circumstances of Housing Schemes Limited, I find that the defendant could not rely on the provisions of Section 279 of the *Companies Act* to convene an Annual General Meeting for the said company since he is not a shareholder of the said company.

Nyacity Limited.

74. I am not persuaded that the said company forms part of the estate of the deceased after perusing the CR-12 dated 16th February 2024 annexed to the plaintiffs supporting affidavit. I however note that the plaintiffs contended that the defendant transferred the deceased's shares in the said company to himself without following proper succession procedures and allotted himself 300 additional shares, diluting the estate's stake. Furthermore, they claimed that the defendant holds the said shares in trust for the deceased's estate. The defendant in rebuttal of the plaintiffs' assertions stated that he rightfully holds the 300 shares in his name and not in trust for the deceased's estate, which shares he legally acquired as an adult while the plaintiffs were minors, making him the company's majority shareholder.

75. I acknowledge that a dispute exists regarding the defendant's shareholding in Nyacity Limited, and more specifically as to how he acquired the deceased's 300 shares, as he was not holding the said shares at the time of its incorporation. This is an issue that requires determination on merits through a full hearing.

Rural Housing Estates Limited.

76. The plaintiffs contended that the shares held by the defendant in the above company are held in trust for the deceased's estate. They submitted that under the Mediation Settlement Agreement, the 2nd & 3rd plaintiffs are the beneficial owners of 74% of Rural Housing Estates Limited, making them majority shareholders. The defendant on the other hand asserted that he holds 3,300 shares in the said company in his own name, making him the majority shareholder.

77. On perusal of the Court Order of 16th October 2019, the deceased's shares in the said company were distributed among the 2nd & 3rd plaintiffs as well as the defendant, making the 2nd & 3rd plaintiffs the beneficial owners of 74% of the shares in Rural Housing Estates Limited. Looking at the company's CR-12 dated 16th February 2024, it shows that the defendant holds 3,300 shares in the said company. It is however not clear how the position regarding the status of the company's shareholding changed from 2019 to 2024, making the defendant the company's majority shareholder with 3,300 shares.

78. In the premise, it is my finding that just as in Nyacity Limited, there is a dispute regarding the defendant's shareholding in Rural Housing Estates Ltd and more specifically, as to how the defendant acquired the 3,300 shares. That is an issue that requires determination on merits through a full hearing.



Cassava Plantations Limited.

79. In respect to Cassava Plantations Limited, the plaintiffs claimed that Mr. Eleshkumar Chandrakant Gheewala made fraudulent share transfers. They referred to the Court Order of 16th October 2019 and asserted that it determined the shareholding distribution of the said company, making the 2nd & 3rd plaintiffs the beneficial majority shareholders of 65% of the company. The plaintiffs contended that the deceased's shares therein are held in trust for his estate and for his beneficiaries by the defendants. Mr. Eleshkumar contended that the Mediation Settlement Agreement referred to by the plaintiff has no bearing on the said company's ownership or management.
80. The 1st defendant submitted that he holds one share in Cassava Plantations Limited and that he is the majority shareholder of Santack Enterprises Limited, which owns 17 shares in Cassava Plantations Limited. Additionally, that as the largest shareholder in Nyacity Limited which holds 62498 shares in Santack Enterprises Ltd, he is the majority shareholder in Cassava Plantations Limited. The 2nd defendant on the other hand submitted that the said company was never part of the succession cause.
81. On perusal of the Court Order of 16th October 2019, it is evident that the deceased's shares in the said company were distributed among the 2nd & 3rd plaintiffs as well as the defendant, making the 2nd & 3rd plaintiffs the beneficial owners of 65% of the shares in Cassava Plantations Limited. The said position is however not reflected on the company's CR-12 dated 16th February 2024 annexed to the plaintiffs' supporting affidavit. Again, it is my finding that it is unclear as to how the position regarding the status of the company's shareholding changed from 2019 to 2024, so as to exclude the 2nd & 3rd plaintiffs as the said company's shareholders.
82. In as much as I agree with the 2nd defendant that Courts should not interfere in company management unless the actions complained of are ultra vires, fraudulent, or unrectifiable by resolution, Courts have powers under Section 782 of the *Companies Act* to make orders for protection of members against oppressive conduct and unfair prejudice. The said Section states that –
1. If, on the hearing of an application made in relation to a company under section 780 or 781, the Court finds the grounds on which the application is made to be substantiated, it may make such orders in respect of the company as it considers appropriate for giving relief in respect of the matters complained of.
 2. In making such an order, the Court may do all or any of the following:
 - a. regulate the conduct of the affairs of the company in the future;
 - b. require the company –
 - i. to refrain from doing or continuing an act complained of; or
 - ii. to do an act that the applicant has complained it has omitted to do;
 - c. authorise civil proceedings to be brought in the name and on behalf of the company by such person or persons and on such terms as the Court directs;
 - d. require the company not to make any, or any specified, alterations in its articles without the leave of the Court;
 - e. provide for the purchase of the shares of any members of the company by other members or by the company itself and, in the case of a purchase by the company itself, the reduction of the company's capital accordingly.



3. Subsection (2) does not limit the general effect of subsection (1).
 4. 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.
83. In the circumstances of this case, I am persuaded that there is a dispute regarding the defendant's shareholding in Cassava Plantations Limited, specifically as to how he acquired the shares therein and how the 2nd & 3rd plaintiffs were excluded from its shareholding. That is an issue that requires determination on merits through a full hearing.

Santack Enterprises Limited.

84. The plaintiffs averred that the deceased was a shareholder in Santack Enterprises Limited, before he passed away. They further averred that the 1st defendant misused his majority shareholder position in the said company, which he obtained fraudulently and irregularly by unlawfully transferring the deceased's shares to himself and the 2nd defendant without undergoing the succession processes, thus diluting the deceased's shareholding. The plaintiffs claimed that the deceased's shares in the said company are being held in trust by the defendants for the deceased estate's beneficiaries.
85. The 2nd defendant contended that the company's CR-12 confirms that the plaintiffs are not its shareholders. The plaintiffs on their part submitted that even though the shares in this company were not listed in the Mediation Settlement Agreement, they remain part of the deceased's estate, in which the plaintiffs have an identifiable stake as beneficiaries.
86. The 1st defendant denied the plaintiffs' allegations and stated that the defendants do not hold the shares in this company in trust for the deceased's estate. He further stated that he was 27 years old at the time when the deceased passed away, while the plaintiffs were minors, thus he had the capacity to have the said shares in his name, which he did.
87. From the foregoing, there is a dispute regarding the defendants' shareholding in Santack Enterprises Limited, specifically as to how the defendants acquired the deceased's shares, as they were not holding the said shares at the time of the company's incorporation. It is my finding that this is an issue that requires determination on merits through a full hearing.

Associated Securities Limited

88. It is not disputed that the Associated Securities Limited was incorporated by the deceased, who was also a shareholder therein. The plaintiffs averred that the defendant misused a Power of Attorney after their father's death in 1984, and fraudulently allotted shares to himself, leading to an unfair advantage in company matters. They contended that in as much as the company's latest CR-12 dated 16th February 2024 lists various family members as shareholders, share transfers have occurred, making the 3rd plaintiff the beneficial owner of all the company's shares under a Court Order given on 16th October 2019, making the 3rd plaintiff the company's majority shareholder.
89. The 1st defendant submitted that the company's shareholding is as per the 2012 Annual Return, which shows he holds 111 shares, while the 1st plaintiff held 142 shares on behalf of the deceased's estate. The defendant stated that the 1st plaintiff relinquished these shares as per the Court Order of 16th October 2019, distributing them in a 10:8:7 ratio, with the defendant receiving the largest portion, making him the majority shareholder of Associated Securities Limited.
90. On perusal of the aforesaid Court Order, which has neither been varied and/or set aside, it is evident that the 3rd plaintiff is the beneficial owner of all of the deceased's shares in Associated Securities



Limited. Further, the contents of the said Order are not only acknowledged but relied on by the defendant in asserting that he is the company's majority shareholder.

91. In the premise, it is my finding that there is a dispute regarding the defendant's shareholding in Associated Securities Limited, and more specifically, as to how he acquired the deceased's shares therein, which issue ought to be determined on merits through a full hearing.
92. In a nutshell, it is evident that the 1st defendant claims majority shareholding in all the six companies. The 2nd defendant claims likewise in some of the companies, but the plaintiffs have cast doubt on how they acquired the deceased's shares so as to attain the said status. Since majority shareholders can outvote minority shareholders, in the event that I do not grant the orders being sought in the six (6) applications, the defendants may pass resolutions without the plaintiffs' consent, despite the disputed status of their shareholding.
93. I have already found that Courts have powers under Section 782 of the Companies Act to make orders for protection of members against oppressive conduct and unfair prejudice, especially so, when the actions complained of are ultra vires, fraudulent, or unrectifiable by resolution. In this case, the plaintiffs have alleged that Mr. Eleshkumar Gheewala fraudulently transferred the deceased's shares to himself after the death of the deceased, thereby diluting the estate's stake to wrongfully attain majority shareholder status. In the premise, it is in the interest of justice, and for the companies herein and their shareholders, to preserve the companies herein, and to keep them as going concerns pending the determination of the disputes on merits.
94. In view of the analysis I have made, I am persuaded that the plaintiffs have established a prima facie case with a probability of success.
95. On the issue of whether the plaintiffs can adequately be compensated by an award of damages in the event that the orders sought herein are not granted, I am not persuaded that this is the case. It is not disputed that the companies herein are worth Billions of Shillings, therefore, due to the uncertainties in the status of the defendants' shareholding and the fact that in the event that this Court does not grant the orders sought, the defendants may pass resolutions without the plaintiffs' consent, there is a possibility no matter how small, that the companies are at the risk of being wasted and/or dissipated to the detriment of their legitimate shareholders.
96. In the case of in *Joseph Siro Mosioma v Housing Finance Company of Kenya Limited & 3 others* [2008] eKLR, the Court held as follows -

...that damages is not automatic remedy when deciding whether to grant an injunction or not. Damages is not and cannot be substituted for the loss which is occasioned by a clear breach of the law, in any case, the financial strength of a party is not always a factor to refuse an injunction. More so a party cannot be condemned to take damages in lieu of his crystallized right which can be protected by an order of injunction.
97. Further, in the case of *Said Almed v Mannasseh Benga & another* [2019] eKLR, the Court held that -

Where it is clear that the defendant's act complained of is or may very well be unlawful, the issue of whether or not damages can be an adequate remedy for the plaintiff does not fall for consideration. A party should not be allowed to maintain an advantageous position he has gained by flouting the law simply because he is able to pay for it. Support for this view is to be found in the Court of Appeal decision in the case of *Aikman vs Muchoki* (1984) KLR 353.



98. It is also now well settled that where there is breach of the law, an applicant cannot be compelled to accept damages as compensation. The defendants having been accused by the plaintiffs of fraudulently transferring the deceased's shares to themselves after the death of the deceased and diluting the estate's stake to wrongfully attain majority shareholder status, I find that damages cannot adequately compensate the plaintiffs in the event that the orders sought herein are not granted, and if eventually, they emerge successful in their suits.
99. The issue of balance of convenience does not arise since I am not in doubt. Nevertheless, based on the analysis that I have made and determination I have made so far, the balance of convenience tilts in favour of the plaintiffs.
100. The upshot is that the applications herein are merited. As a result, I issue the following orders pending the hearing and determination of the six (6) suits that form the subject of this ruling -
- i. A temporary injunction is hereby granted restraining the defendants either directly or indirectly from calling or holding any General Meetings of Housing Schemes Limited, Nyacity Limited, Rural Housing Estates Limited, Cassava Plantations Limited, Santack Enterprises Limited & Associated Securities Limited without the plaintiffs' consent or further Court orders;
 - ii. A temporary injunction is hereby issued restraining the defendants either directly or indirectly from purporting to exercise majority shareholder rights or interfering with the aforesaid companies' management, operations, and affairs without the plaintiffs' approval or Court orders; and
 - iii. Costs shall be in the six (6) causes.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 28TH DAY OF MARCH 2025.
RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

NJOKI MWANGI

JUDGE

In the presence of:

Mr. Kimamo Kuria for the plaintiffs/applicants

Ms Kale h/b for Mr. Nyaanga for the defendant/respondent

Mr. Owiti for the 2nd defendant/respondent in HCOMM No. E074 of 2024 and E076 of 2024

Ms B. Wokabi – Court Assistant.

