



**Mohamed & another v Isaak & another (Commercial Case E028 of 2021)
[2025] KEHC 3899 (KLR) (Commercial and Tax) (27 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3899 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E028 OF 2021
AA VISRAM, J
MARCH 27, 2025**

BETWEEN

MOHAMEDIN MOHAMED 1ST PLAINTIFF

HISH COMPANY LIMITED 2ND PLAINTIFF

AND

IBRAHIM ISMAIL ISAAK 1ST DEFENDANT

YUSSUF ADAN HUSSEIN 2ND DEFENDANT

RULING

Introduction and Background

1. Before the Court for determination is the Notice of Preliminary Objection dated 15th November, 2021 (“the Objection”) wherein, the Defendants seek to impeach the competence of the Plaintiffs’ entire suit and application dated 30th December, 2020, for lacking the Board resolution of the 2nd Plaintiff and in contravention of Order 4 rule 1(4) and Order 9 rule 2(c) of the Civil Procedure Rules and Section 241(2)(a) of the *Companies Act* (Chapter 486 of the Laws of Kenya). As such, the Defendants aver that the whole suit is illegally before the Court, frivolous, and an abuse of the court process and that the same should be dismissed in its entirety with costs.
2. The Objection was canvassed by way of written submissions which I have considered, and will make relevant references to in my analysis and determination below.
Analysis and Determination
3. The main issue falling for determination is whether the Objection is merited and whether the suit should be dismissed for want of a Board Resolution and authority to institute the present suit. The parties agree that for a Preliminary Objection to succeed, the same must be capable of disposing of the



suit. It must raise a pure point of law and it cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion (See Mukisa Biscuit Manufacturing Co. Ltd v. West End Distributors Ltd. (1969) EA).

4. However, before looking at the merits of the Objection, I was struck by the Plaintiffs' submission that the application in respect of which the Objection has been filed, has already been determined, and the ruling issued by my brother, Mabeya J. on 6th May, 2021.
5. A perusal of the record confirms that this is in fact, the position, and a further perusal indicates that the Defendants' attempt to set aside and/or vary the orders emanating from the said ruling were also dismissed by the court, Mabeya, J., in a ruling dated 21st October, 2022.
6. The record also confirms that the Defendants had filed a similar Objection dated 7th April, 2021, which ought to have been prosecuted before, or together with the application dated 30th December, 2020, but was not.
7. It is therefore evident, that the Defendants deliberately sought to mislead this Court by filing the present Objection, knowing all too well that the subject Application had been determined, and further application to set aside the same dismissed. The Objection is without any doubt an abuse of court process.
8. I would wish to therefore remind Counsel on record of his duty as an Advocate. The duty to the court is a fundamental aspect of legal ethics and professional conduct. This duty requires an Advocate to act with integrity, fairness, and respect toward the judicial system. It includes a further duty to act with candor and honesty, and not mislead the court through false statements, suppression of material facts, or misrepresentation. Most importantly, this duty, comes before an Advocate's duty to his or her client. Advocates, are first and foremost officers of the court.
9. The Preliminary Objection dated 15th November, 2021, is without merit. I find that the same is an abuse of court and is dismissed with costs to the Plaintiffs.

DATED AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS THIS 27TH DAY OF MARCH, 2025

ALEEM VISRAM, FCIArb

JUDGE

In the presence of;

.....Court Assistant

.....for 1st Plaintiff

..... for 2nd Plaintiff

..... for 1st Defendant

..... for 2nd Defendant

