



Bing & another v Shuitong (Miscellaneous Civil Application E004 of 2025) [2025] KEHC 3783 (KLR) (26 March 2025) (Ruling)

Neutral citation: [2025] KEHC 3783 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
MISCELLANEOUS CIVIL APPLICATION E004 OF 2025
DO CHEPKWONY, J
MARCH 26, 2025**

BETWEEN

CHEN BING 1ST PLAINTIFF

FUJIAN SHIXIN INVESTMENT AND DEVELOPERS (KENYA)

LIMITED 2ND PLAINTIFF

AND

CHEN SHUITONG DEFENDANT

RULING

1. The Applicant moved the court through Notice of Motion application dated 4th March, 2025 which seeks the following orders:
 - a. Spent.
 - b. That the Applicant be granted leave to continue the derivative claim seeking relief on behalf of Fujian Shixin Investment And Developers (Kenya) Limited in respect of the acts and omissions by the Respondent, involving negligence, default, breach of duty, and breach of trust in their capacity as director of Fujian Shixin Investment And Developers(Kenya) Limited on such terms as the Honuorable Court considers fit.
 - c. That pending the hearing and determination of this Application a temporary injunction be issued restraining the Respondent, his servants, agents, surrogates and/or employees selling, alienating, transferring, charging, disposing, removing or in any manner whatsoever dealing with the assets of Fujian Shixin Investment And Developers (Kenya) Limited Developers (Kenya) Limited.
 - d. That pending hearing and determination of this Application an order be and is hereby issued directing Motor Vehicles Registration Numbers KCW 895V Mazda, KDC 828F Toyota



Probox, KDH 348F Shackman Tipper Truck , KCX 182N Shackman Tipper Truck, KCX 182N Shackman Tipper Truck, KCX 139Q Shacman Tipper, KDC 168R Nissan Xtrail, KHMA 439S Excavator and other movable assets of the 2nd Applicant to be taken to Ndeiya Police Station for safe keeping/custody.

- e. That pending hearing and determination of this Application a temporary injunction be issued stopping the operation of the Company's machinery to wit; Vibrating Feeder, German Version of Jaw crusher, Hydraulic Stone Crusher and Sand Maker at the Company's project site in Ndiuni Area, in Limuru Subcounty, Kiambu County.
 - f. That pending hearing and determination of this Application, the *OCPD* Ndeiya or an officer under his or her command to ensure compliance with the above orders.
 - g. That pending the hearing and determination of the derivative claim, a temporary injunction be issued restraining the Respondent, his servants, agents, surrogates and/or employees selling, alienating, transferring, charging, disposing, removing or in any manner whatsoever dealing with the assets of Fujian Shixin Investment And Developers(Kenya) Limited.
 - h. That pending hearing and determination of the derivative claim, an order be and is hereby issued directing Motor Vehicles Registration Numbers KCW 895V Mazda, KDC 828F Toyota Probox, KDH 348F Shackman Tipper Truck, KCX 182N Shackman Tipper Truck, KCX 182N Shackman Tipper Truck, KCX 139Q Shacman tipper, KDC 168R Nissan Xtrail, KHMA 439S Excavator and other movable assets of the 2nd Applicant to be taken to Ndeiya Police Station for safe keeping/custody.
 - i. That pending hearing and determination of the derivative claim, a temporary injunction be issued stopping the operation of the Company's machinery to wit; Vibrating Feeder, German Version of Jaw Crusher, Hydraulic Stone Crusher and Sand Maker at the Company's project site in Ndiuni Area, in Ndeiya Subcounty, Kiambu County.
 - j. That the OCPD Ndeiya or an officer under his or her command to ensure compliance with the above orders.
 - k. That the costs of this Application be provided for.
2. The Respondent opposed the Application through Notice of Preliminary Objection dated 13th March, 2025 on the following grounds:
- a. The Plaintiffs/Applicants have not met the required threshold to prosecute a derivative claim under Sections 238, 239, 240 and 241 of the *Companies Act*, 2015.
 - b. Under the *Companies Act*, 2015, the right of a Shareholder/Director to bring an action against another Director and/or Shareholder, as established in *Isaiab Waweru Ngumi & 2 Others v Muturi Ndung'u* [2016] eKLR, is subject to strict procedural compliance. The Plaintiffs/Applicants have failed to adhere to the legally prescribed procedure for instituting a derivative claim.
 - c. The Plaintiffs/Applicants lack the requisite locus standi to institute and prosecute this suit.
 - d. The Plaintiff has failed to demonstrate that they fairly and adequately represent the interests of shareholders similarly situated or the corporation, as required under *Isaiab Waweru Ngumi & 2 Others v Muturi Ndung'u* [2016] eKLR, A shareholder seeking to bring a derivative suit to pursue a personal vendetta or private claim should not be granted leave.



- e. The Plaintiff has not acted in good faith, and the action taken is inconsistent with what a faithful director, adhering to the duty to promote the success of the company, would undertake. This further undermines the validity of the derivative claim as per Isaiab Waweru Ngumi & 2 Others v Muturi Ndung'u [2016] eKLR.
3. Having listened to the Applicant's counsel, I have also read through the Notice of Motion application and the Notice of Preliminary Objection filed herein and find it prudent to issue the following directions:-
- a. The Notice of Preliminary Objection dated 13th March, 2025 and the Notice of Motion application dated 4th March, 2025 be canvassed contemporaneously by way of written submissions.
- b. The parties to file and exchange their written submissions within 21 days of each other with the Applicant going first.
- c. In view of the issues in contention, I find it prudent to preserve the subject matter and proceed to allow the application in the following terms:-
- i. That a temporary injunction be and is hereby issued restraining the Respondent, his servants, agents, surrogates and/or employees selling, alienating, transferring, charging, disposing, removing or in any manner whatsoever dealing with the assets of Fujian Shixin Investment And Developers (Kenya) Limited Developers (Kenya) Limited pending hearing and determination of this Application.
- ii) That an order be and is hereby issued directing Motor Vehicles Registration No.KCW 895V Mazda, KDC 828F Toyota Probox, KDH 348F Shackman tipper truck , KCX 182N Shackman tipper truck, KCX 182N Shackman tipper truck, KCX 139Q Shacman tipper, KDC 168R Nissan Xtrail, KHMA 439S excavator and other movable assets of the 2nd Applicant to be taken to Ndeiya police station for safe keeping/ custody pending hearing and determination of this Application.
- iii. That a temporary injunction be issued stopping the operation of the company's machinery to wit; Vibrating feeder, German Version of Jaw crusher, Hydraulic stone crusher and sand maker at the Company's project site in Ndiuni Area, in Limuru subcounty, Kiambu County pending hearing and determination of this Application.
- d. Mention on 8th April, 2025 for parties to confirm compliance and take further directions.
- e. These directions and Notice to be served upon the Respondent and or its counsel.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 26TH DAY OF MARCH , 2025.

D. O. CHEPKWONY

JUDGE

In the presence of:

Mr. Rogers Alinyo counsel for the 1st and 2nd Applicants/Plaintiffs

Court Assistant - Martin

