



**Kandie v Nora Properties Ltd & 2 others (Commercial Case E271 of 2024)  
[2025] KEHC 11558 (KLR) (Commercial and Tax) (31 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11558 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL CASE E271 OF 2024**

**PM MULWA, J**

**JULY 31, 2025**

**IN THE MATTER OF AN APPLICATION UNDER  
SECTION 780, 782 AND 786 OF THE COMPANIES ACT**

**BETWEEN**

**CONSTANTINE JELIMO SERONEY KANDIE ..... APPLICANT**

**AND**

**NORA PROPERTIES LTD ..... 1<sup>ST</sup> RESPONDENT**

**KIGEN KANDIE ..... 2<sup>ND</sup> RESPONDENT**

**BRAEBURN LTD ..... 3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

1. This is a judgment in respect of the Plaintiff's suit commenced by Originating Summons dated 17<sup>th</sup> May 2024, and brought under Sections 780, 782 and 786 of the *Companies Act*, the *Constitution* of Kenya 2010, and all other enabling provisions of the law. The Plaintiff seeks declaratory and injunctive reliefs concerning dividends allegedly due to the estate of the late Dr. Kiptui Kandie from the 1<sup>st</sup> Defendant, Nora Properties Ltd.
2. The facts giving rise to the suit are largely not in dispute. The Plaintiff is the widow and duly appointed legal representative of the estate of the late Dr. Kiptui Kandie, who passed away on 7<sup>th</sup> February 2023. The deceased was a shareholder and director in the 1<sup>st</sup> Defendant, Nora Properties Ltd, a family company that holds shares in the 3<sup>rd</sup> Defendant, Braeburn Ltd, solely for purposes of receiving dividends.
3. It is not disputed that the deceased held 25% of the shares in Nora Properties Ltd and that the company receives dividends from Braeburn Ltd on a quarterly basis. The Plaintiff avers that since the death of



her husband, she and the estate have been excluded from any management or benefit of the company's operations.

### **Plaintiff's case**

4. The Plaintiff alleges that approximately Kshs. 20 million in dividends due to the deceased's estate have been received and misappropriated by the 2<sup>nd</sup> Defendant. She also contends that her requests for access to financial information have been stonewalled, and she urges that the estate, as the rightful shareholder by transmission, is being oppressed in contravention of Sections 780 and 782 of the [Companies Act](#).
5. The Plaintiff seeks the following specific reliefs:
  - i. An injunction restraining the 3<sup>rd</sup> Defendant from releasing dividends due to the 1<sup>st</sup> Defendant pending determination of the suit;
  - ii. In the alternative, an order for conservation of the said dividends;
  - iii. An order that the Defendants account for all dividends received from 7<sup>th</sup> February 2023;
  - iv. An order allowing the Plaintiff to be a mandatory signatory to Nora Properties Ltd's account at Middle East Bank;
  - v. Costs of the suit.

### **Defendants' responses**

6. The 2<sup>nd</sup> Defendant filed a Replying Affidavit dated 7<sup>th</sup> June 2024, objecting to the jurisdiction of this Court on grounds that the dispute falls within the domain of the Family Division, given pending Succession Cause HCEP&A/E1338 of 2023. He also contends that the deceased's estate is indebted to the 1<sup>st</sup> Defendant in the sum of Kshs. 16,685,407.00, being advances drawn by the deceased in his lifetime. He also denies misappropriating dividends or excluding the Plaintiff from company affairs, and states that the 1<sup>st</sup> Defendant is governed by a board of three directors, and that all decisions are taken collectively and in accordance with the company's articles and as such the applicant has not proved his actions in influencing the other directors.
7. The 3<sup>rd</sup> Defendant, Braeburn Ltd through its Head of Legal Services Mafrick Munene filed a Replying affidavit sworn on 19<sup>th</sup> September 2024. He asserts that the Plaintiff is not a shareholder of the 1<sup>st</sup> Defendant and thus lacks standing to bring this action under the [Companies Act](#). It also states that the deceased, in a mandate dated 15<sup>th</sup> September 2022, directed that 50% of his dividends be paid to Braeburn School Limited. Further, it argues that disclosure of information would breach its fiduciary duty to the 1<sup>st</sup> Defendant.
8. The application was heard by way of written submissions, the applicant filed submissions dated 26<sup>th</sup> July 2024 while the 1<sup>st</sup> and 2<sup>nd</sup> Respondents filed submissions dated 26<sup>th</sup> July 2024 and the 3<sup>rd</sup> Respondent filed submissions dated 19<sup>th</sup> September 2024.

### **Analysis and determination**

9. I have carefully considered the pleadings, affidavits and submissions of both parties. The preliminary issues for determination are:
  - i. Whether this Court has jurisdiction to entertain the dispute;
  - ii. Whether the Plaintiff has the requisite locus standi under the [Companies Act](#);



- iii. Whether the reliefs sought can be granted.

### **Whether the court has jurisdiction.**

10. Jurisdiction is everything. It is trite that without jurisdiction, a court must down its tools. This principle was famously enunciated in the landmark decision of the Court of Appeal in *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* [1989] KLR 1.
11. The Supreme Court in *Samuel Kamau Macharia & Another v Kenya Commercial Bank Limited & 2 Others* [2012] eKLR reaffirmed this position, stating that:

“A Court’s jurisdiction flows from either the Constitution or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the Constitution or other written law.”
12. The Applicant argues that this Court is clothed with jurisdiction pursuant to Sections 780(1), 782(1), and 782(2)(c) of the Companies Act, No. 17 of 2015. These provisions grant the High Court jurisdiction to resolve disputes relating to the affairs of companies, including complaints by shareholders alleging unfair prejudice or breach of fiduciary duties by directors or other shareholders.
13. Specifically, Section 782(2)(c) empowers the Court to grant relief where the company’s affairs are being conducted in a manner oppressive or unfairly prejudicial to a member. Section 780(1) expressly provides that a member of a company may apply to the Court for relief on grounds of unfair prejudice.
14. On their part, the Defendants rely on the sub judice rule under Section 6 of the Civil Procedure Act and contend that this suit is barred due to the pendency of Nairobi High Court Succession Cause No. E1338 of 2023 in the Family Division. They argue that the dispute ought to be ventilated in that forum, given the involvement of the estate of a deceased shareholder.
15. However, it must be noted that the Plaintiff herein does not seek letters of administration, the distribution of estate assets, or any orders relating to the administration of the deceased’s estate. Rather, the cause of action before this Court concerns allegations of breach of fiduciary and statutory obligations owed to the shareholders and directors of a company, in which the estate is said to have a beneficial interest. In this respect, the dispute is rooted in corporate governance and falls squarely within the ambit of the Companies Act.
16. For the sub judice rule to apply, the matter in issue must be directly and substantially in issue in both suits. Mere relevance or connection is insufficient. In the present case, while there may be overlapping interests arising from the estate’s shareholding in the company, the issues for determination are not substantially the same. This suit is concerned with the manner in which the affairs of the company are being conducted, not with the administration or distribution of the estate of the deceased.
17. In light of the foregoing, I find and hold that this Court is properly seized of jurisdiction to entertain and determine the dispute before it under the Companies Act. The existence of a parallel succession cause does not oust this Court’s jurisdiction to adjudicate on corporate and fiduciary matters affecting shareholders.

### **On the issue of locus standi**

18. The Respondents have challenged the competency of the application on grounds that the Applicant lacks locus standi to institute these proceedings, contending that she is neither a shareholder nor a member of the 1<sup>st</sup> Respondent company.



19. Locus standi refers to the right of a party to appear and be heard before a court of law. As defined in Black’s Law Dictionary, it denotes “the right to bring an action or to be heard in a given forum.” The question of locus standi is therefore foundational and touches on the capacity of the party to seek judicial redress.
20. In response, the Applicant asserts that she possesses the requisite locus standi by virtue of being a legal representative of the estate of the late Dr. Kiptui Kandie, who was a shareholder in the 1<sup>st</sup> Respondent. Although the confirmation of grant in Succession Cause No. HCEP&A/E1338 of 2023 is pending, she argues that she is entitled to act on behalf of the estate for purposes of protecting its beneficial interest in the 1<sup>st</sup> Respondent.
21. Section 238 (6) (b) of the *Companies Act* provides that:
- “For the purposes of this Part, a reference to a member of a company includes a person who is not a member but to whom shares in the company have been transferred or transmitted by operation of law.”
22. Further Section 780 (2) of the Act provides that:
- In this section... “member”, in relation to a company, includes a person who is not a member of the company but is a person to whom shares of the company—
- a. have been transferred; or
  - b. have been transmitted by operation of law by dint of being beneficiaries of the deceased shareholders.
23. In my view, this provision is clearly intended to protect the rights of legal representatives and beneficiaries of deceased shareholders in company disputes.
24. Section 79 of the *Law of Succession Act* is also instructive. It states:
- “The executor or administrator to whom representation has been granted shall be the personal representative of the deceased for all purposes of that grant, and, subject to any limitation imposed by the grant, all the property of the deceased shall vest in him as personal representative.”
25. This means that once a grant of representation has been issued, whether or not confirmed the personal representative is vested with legal authority over the estate assets, including any shareholding rights.
26. It is not in dispute that the Applicant is a petitioner in the pending succession proceedings and a beneficiary of the deceased’s shares in the 1<sup>st</sup> Respondent. Upon confirmation of the grant, the Applicant is expected to step into the shoes of the deceased shareholder, with the shareholding transmitted to her as envisaged under both the *Companies Act* and the *Law of Succession Act*.
27. In view of the statutory framework and the uncontested fact that the Applicant is a legal representative and beneficiary of the estate of a deceased shareholder, I am satisfied that the Applicant has established sufficient locus standi to bring the present application. The preliminary objection on that ground is therefore without merit.



## Whether the reliefs sought can be granted

28. Section 780 (1) of the *Companies Act* provides that:

A member of a company may apply to the Court by application for an order under section 782 on the ground:

- a. that the company's affairs are being or have been conducted in a manner that is oppressive or is unfairly prejudicial to the interests of members generally or of some part of its members (including the applicant); or
- b. that an actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be oppressive or so prejudicial.

29. The Plaintiff seeks, inter alia, a permanent injunction to restrain the 3<sup>rd</sup> Defendant from releasing dividends due to the 1<sup>st</sup> Defendant, pending final determination of the estate's interest in the company. This invites the Court's consideration of the well-settled principles for the grant of interlocutory injunctive relief.

30. The applicable criteria were set out in *Giella v Cassman Brown & Co. Ltd* [1973] EA 358, They are:

- i. The applicant must demonstrate a prima facie case with a probability of success;
- ii. The applicant must show that they will suffer irreparable injury not compensable by damages; and
- iii. If the Court is in doubt, it will decide the application on a balance of convenience.

31. In the present matter, it is not contested that the Plaintiff is the widow and duly appointed administrator of the estate of the late Dr. Kiptui Kandie, who was a shareholder and director of the 1<sup>st</sup> Defendant company. It is also common ground that Nora Properties Ltd functions solely as a vehicle to receive dividends from Braeburn Ltd, and that the deceased held a 25% stake therein. Since the demise of the deceased, the Plaintiff avers that she has been excluded from the management of the company and denied access to information and benefits, including dividends.

32. The 3<sup>rd</sup> Defendant argues that the deceased had an outstanding debt and had executed a legal mandate dated 15<sup>th</sup> September 2021, directing that 50% of his future dividends be assigned to the 3<sup>rd</sup> Defendant. However, upon review of the said mandate, I observe that while it purports to assign future income, it does not substantiate the existence of the alleged debt of Kshs. 16,685,407.00, and fails to demonstrate for how long the dividends will be remitted to the 3<sup>rd</sup> Defendant. In the absence of corroborating evidence or any acknowledgment of debt, I find the alleged indebtedness unproven.

33. From the foregoing, the Plaintiff has made out a serious and arguable case that there has been exclusion and mismanagement. Her claim that over Kshs. 20 million in dividends have been diverted without her knowledge or participation, if proven, would amount to conduct that is oppressive and unfairly prejudicial within the meaning of Section 780 of the *Companies Act*.

34. The Plaintiff has deponed that the dividends in issue are the primary source of livelihood for the deceased's dependants, including minor children, and that the family is experiencing hardship due to non-receipt of the funds. The Defendants have not meaningfully rebutted these averments. The deprivation of educational opportunities, particularly where students face suspension or expulsion, cannot be adequately compensated by damages. The harm is not merely monetary but includes long-term welfare and loss of inheritance.



35. As to the balance of convenience, the Plaintiff does not seek immediate disbursement but rather conservation of the funds in dispute. The Respondents have not demonstrated how they would be prejudiced by a freeze or custodial order preserving the dividends pending the determination of the succession. On the other hand, continued dissipation or concealment of the dividends risk rendering the claim academic exercise.
36. I am therefore satisfied that the Plaintiff has met the threshold for the grant of an interlocutory injunction. Preservation of the dividends is necessary to protect the estate's interest and the integrity of the pending proceedings.
37. In the result, I make the following orders:
- a. An order is hereby issued restraining the 3<sup>rd</sup> Defendant, Braeburn Ltd, from releasing or distributing any dividends payable to Nora Properties Ltd without prior leave of the Court.
  - b. In the alternative, and for avoidance of doubt, Braeburn Ltd shall hold and conserve all dividends currently due and accruing to Nora Properties Ltd in trust and shall not release the same to any party pending further orders of this Court.
  - c. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants are hereby directed to file and serve a full and accurate account of all dividends received by Nora Properties Ltd from 7<sup>th</sup> February 2023 to the date of this Ruling, including any payments made or set-offs claimed against the estate of the late Dr. Kiptui Kandie.
  - d. The Plaintiff's request to be made a signatory to the company's account fails at this juncture.
  - e. Costs shall be in the cause.

Orders accordingly.

**JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 31<sup>ST</sup> DAY OF JULY 2025.**

**PETER M. MULWA**

**JUDGE**

In the presence of:

Mr. Omino for Applicant/Plaintiff

Ms. Anne Mbugua for 1<sup>st</sup> & 2<sup>nd</sup> Respondents

Mr. Mwangi for 3<sup>rd</sup> Respondent

Court Assistant: Carlos

