



**Maina & 3 others v Actis Kenya Limited (Civil Suit E256 of 2022)
[2025] KEHC 11533 (KLR) (Civ) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11533 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL SUIT E256 OF 2022

JN MULWA, J

JULY 31, 2025

BETWEEN

PATRICK ALOUIS MACHARIA MAINA 1ST PLAINTIFF

ANN MALINDA TOMA 2ND PLAINTIFF

**SMM (MINOR SUING THROUGH THE NEXT FRIEND AND FATHER
PATRICK ALOUIS MACHARIA MAINA) 3RD PLAINTIFF**

**JMM (MINOR SUING THROUGH THE NEXT FRIEND AND FATHER
PATRICK ALOUIS MACHARIA MAINA) 4TH PLAINTIFF**

AND

ACTIS KENYA LIMITED DEFENDANT

RULING

1. There are two (2) applications before the court for determination dated 31/01/2024 filed by Actis Kenya Limited (hereafter the Defendant's motion) and the other dated 08/10/2024 filed by Patrick Alouis Macharia Maina, Ann Malinda Toma, SMM and JMM (hereafter the Plaintiffs motion).
2. The Defendant's motion dated 31/01/2024 is premised on Section 1A, 1B & 3A of the [Civil Procedure Act](#) (CPA), Order 2 Rule 15 and Order 51 Rule 1 of the Civil Procedure Rules (CPR) seeking inter alia:
 - a. That this Honorable Court be pleased to strike out Actis Kenya Limited as a Defendant in the suit.
 - b. That cost of this application be provided for.
3. The motion is premised on grounds found at the supporting affidavit sworn by Kabir Chal, dated 31/01/2024. The gist of his deposition is that the Plaintiffs have alleged without truth or



foundation that the Defendant owns and or controls the real estate property known as “Garden City Mall” (hereafter Mall) and that the Defendant is liable for the acts and or omissions of the employees, agents and or servants of the Mall wherein a series of events took place as alleged in the plaint.

4. Further it is alleged that the Defendant has no legal or beneficial affiliation to and does not directly or indirectly own the Mall and is therefore not responsible, vicariously or otherwise for the acts and or omissions of the employees, agents and servants of the mall. He goes on to depose that the Defendant is a stranger to the suit, which equally discloses no reasonable cause of action. In conclusion he deposes that it is in the interest of justice that the order sought in the motion is granted.
5. The Plaintiffs oppose the motion by way of grounds of opposition dated 22/07/2024 and a lengthy relying affidavit of even date deposed by Patrick Alouis Macharia. The Plaintiffs oppose the Defendant’s motion on grounds that -; by way of admission made by the Defendant and or its agent, it is estopped from denying the Plaintiffs truth; that as principal the Defendant is bound by acts and or admissions of its agent; that parties are bound by their pleadings and that the Defendant’s statement of defense manifestly comprises of general denials; that the Defendant only denies current ownership of the Mall but does not deny that it owned and or controlled the mall at the material time relevant to the suit; that Defendant cannot approbate and reprobate; and that the defendants affidavit material constitutes mere averments with no documentary evidence to support the said averments.
6. In further opposition to the motion, Patrick Alouis Macharia states that prior to sending his demand letter to the Defendant he obtained a CR12 from the Business Registration Services (BRS), from which he noted the particulars of the company’s directors, shareholders and company secretary; that on 23/12/2022 he received an email from the firm of Adrian Kamotho Njenga & Co. Advocates, who in the said letter did not make any distinction between the Defendant and Garden City Mall with respect to the nature and or extent of instructions.
7. Additionally, the Defendant merely denies current ownership of the Mall but does not deny that it owned and or controlled Garden City Mall at the material time relevant to the suit. He goes on to depose that the Plaintiffs have a bona fide cause of action against the Defendant and that the motion is an abuse of the Court process.
8. In summation, the plaintiffs state that even if the Defendant is not expressly registered as a de jure owner of the Mall, it is a de facto owner and or controller of the Mall or beneficial owner of the same.
9. In rejoinder by way of a supplementary affidavit dated 07/10/2024, Kabir Chal maintains that the Defendant is not the owner nor did it control the Mall at the material time in the suit; that the duty of proving ownership of the Mall unequivocally lies on the Plaintiffs. He goes on to depose that the Plaintiffs are engaging in a fishing expedition by attempting to ascertain the ownership of the Mall by baiting the Defendant as can be gathered by the lack of specificity and precision in the Plaintiffs pleadings; He concludes by specifically deposing that to the best of his knowledge at no material time did the Defendant instruct the firm of Adrian Kamotho Njenga & Co. Advocates to act on its behalf whether by way of representation or to respond to the Plaintiffs demand letter.
10. On their part, the Plaintiffs motion dated 8/10/2024 is brought pursuant to Section 1A, 1B & 3A of the CPA, Order 1 Rule 3, 5, 7, 9, & 10(4), Order 5 Rule 21(f)(g) &(h) & Rule 27 of the CPR, seeking inter alia:
 - a. That the Plaintiff be granted leave to add new defendants to the suit as owner(s) of Garden City Mall as at 21/12/2019 – as 2nd Defendant; thus-

GC Retail as the 3rd Defendant



Ruaraka Diversified Investments Ltd as the 4th Defendant

Actis International Ltd as the 5th Defendant

Actis LLP as the 6th Defendant

Koome Gikunda as the 7th Defendant

Michael Turner as the 8th Defendant

Knight Frank (Kenya) Limited as the 9th Defendant

Securex Agencies (Kenya) Limited as the 10th Defendant

Bryan Bundi alias Brian Bundi as the 11th Defendant

Daniel Mutua as the 12th Defendant

General Atlantic alias General Atlantic Services Company LP alias General Atlantic Partners LP as the 13th Defendant

- b. That the aforesaid intended defendants be and are hereby enjoined in the suit as the 2nd – 13th Defendants respectively and the current Defendant be and is hereby designated as the 1st Defendant.
 - c. That the Plaintiff be and hereby-granted leave to file a further amended plaint within 30 days in light of the added defendants.
 - d. That summons issue against the added defendants upon filing of the further amended plaint.
 - e. That the Plaintiffs be granted leave to effect service of summons and suit documents outside Kenya upon the 2nd, 5th, 6th, 8th and 13th intended Defendants and upon any other defendant who is currently outside Kenya
 - f. That the Plaintiff may effect service upon the Defendants by way of email, WhatsApp, or by any other electronic means;
 - g. That if need be the corporate veil of the Defendant be temporarily lifted in the interest of justice to enable the Court examine the relationship between the Defendant and 2nd to 8th and 13th intended Defendants.
 - h. That the Plaintiff be awarded the costs of this application.
11. The motion is premised on grounds found in the lengthy supporting affidavit sworn by Patrick Alouis Macharia Maina of even date. The gist of his deposition is that he perceives the ownership and control of Garden City Mall as being complex and convoluted because it is comprised of an entangled mix of de facto and de jure ownership claims by persons and/or a group of companies that identify jointly and severally as “Actis”.
12. That the 2nd, 5th, 6th 8th & 13th intended Defendants are foreigners who are likely to be found in the United Kingdom and United States. He goes on to state that pursuant to extensive mainstream media coverage of past events associated with the Garden City Mall, including events that were graced by prominent officials of the government of Kenya, he is aware that, at the material times of the suit, the Mall was owned, co-owned, and/or controlled by a person or persons named “Actis” whose directors, principal officers, agents, managers and/or alter egos are Mr. Koome Gikunda, Mr. Michael Turner and Mr. Ben Woodhams of Knight Frank.



13. That upon a search at BRS he established the existence of the Defendant and its directors who include some of the intended Defendants to this suit, and reiterates that the firm of Adrian Kamotho Njenga & Co. Advocates, in response to his demand letter addressed him with the representation that it was duly instructed by the Defendant and Garden City Mall thereby causing him to believe that the Defendant owned and or controlled Garden City Mall.
14. He asserts that the Intended Defendants are necessary parties to the suit on grounds that-; the Defendant and the Intended 2nd to 6th Defendants are closely related and likely alter egos of each other on the premises of documents he has since managed to obtained arduously; that the Intended 3rd and 4th Defendants on their part appear to be de jure owners of the Mall based on pleadings filed before Court in another matter; that Intended 5th and 6th Defendants as per a CR12 search of the Defendant, the 5th Intended Defendant wholly owns and controls the Defendant whereas 6th Intended Defendant funded the latter; that the Intended 7th and 8th Defendant are likely co-proprietors or co-principals or alter egos of the Actis that is associated with the ownership and control of the Garden City Mall.
15. That the Intended 9th Defendant was managing the Mall on behalf of its owners; that the Intended 10th Defendant was providing security at the Mall as agents or servants of the owners of Garden City Mall; that the Intended 11th Defendant was a security manages of the Mall and acted as an agent and or servant of the owners of the Mall; that the Intended 12th Defendant was an employee, servant or agent of the Intended 9th Defendant; and that the Intended 13th Defendant in the third quarter of 2024 completed the acquisition of the Defendant and the 2nd to 6th Intended Defendant as a going concerns.
16. The Defendant opposes the Plaintiffs motion by way of a replying affidavit deposed by Kabir Chal dated 05/11/2024. He opposes the motion by deposing that the Plaintiffs request for service electronically and outside Kenya is an attempt to circumvent the provisions of Order 5 of the CPR. That the Plaintiffs attempt to lift the corporate veil is fundamentally flawed and lacks legal justification whereas the Defendant has no connection to ownership and or control of the Mall. He goes on to assert that the Defendant is not a shell company or a Special Purpose Vehicle (SPV) of the 2nd or 6th Intended Defendant as alleged by the Plaintiff and that Defendant has never owned or controlled the Mall and therefore could never sell the Mall to a third party whereas the use of the term 'Actis' ought not collectively bind the defendants to joint or several liability for any wrongs committed by the legal owners of the Mall.
17. He concludes by deposing that the Plaintiffs appear uncertain as to the identity of the proper party that is responsible for the alleged infractions that form their claim set out in the Plaint as such their motion ought to be dismissed with costs.

Issues for determination

- a. Whether the Court ought to strike out the Defendant from the suit?
- b. Whether the Court ought to grant leave to the Plaintiffs to enjoin the Intended defendants and amend their plaint accordingly?
- c. Whether the Court ought to grant leave to the Plaintiffs to effect service of summons upon the 2nd, 5th, 6th, 8th and 13th intended Defendants and upon any other defendant who is currently outside Kenyan jurisdiction?
- d. Whether upon grant of the above leave, the Plaintiffs may effect the said service by way of email, WhatsApp, or by any other electronic means?



- e. Whether the Court ought to temporarily lift the Defendant's corporate veil in the interest of justice to enable the Court examine the relationship between the Defendant and 2nd to 8th and 13th intended Defendant?
- f. Who ought to bear the costs of the motion?

Whether the Court ought to strike out the Defendant from the suit?

- 18. The Defendant's motion invokes alongside Section 3A of the CPA, Order 2 Rule 15 of the CPR, which provides for strike out of pleadings. Ex facie by its motion, the Defendant seeks to be struck out from the suit and not to strike out the Plaintiffs pleadings. This notwithstanding the fact that the Defendant has gone ahead to argue the motion on the premise of seeking the latter relief. It is trite that parties are bound by their pleadings, to wit, the issues for determination by a Court ought to be premised on pleadings. See *North Kisii Central Farmers Limited v Jeremiah Mayaka Ombui & 4 others* [2014] KECA 586 (KLR). Therefore, the applicable provision in respect of the Defendant motion would be Order 1 Rule 10 (2) of the CPR and not Order 2 Rule 15.
- 19. The power of the Court to enjoin or strike out a party from proceedings is donated by Order 1 Rule 10 (2) of the CPR which provides that-;

“The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added..”
- 20. In *Civicon Limited v Kivuwatt Limited & 2 others* [2015] KECA 588 (KLR), the Court while addressing itself to the above provision succinctly put it that the power given under the Rule is discretionary which discretion must of necessity be exercised judicially. With the above in reserve, in order to contextualize the motion, this Court must in brief revisit the Plaintiffs pleadings. Indubitably, a perfunctory look at the Plaintiffs suit particular at Paragraph 2.1 and 3.1 thereof, concerns an incident that occurred on or about the 21/12/2019 at “Garden City Mall”.
- 21. That said, the Court gathers that the ground upon which the Defendant relies on so as to be struck out from the instant proceedings saliently rests on the fact that they do not own, or have any legal or beneficial affiliation with “Garden City Mall” upon which the Plaintiffs suit or cause of action is anchored upon.
- 22. The Plaintiffs retort to the above is that the Defendant has failed to demonstrate and or evince any material to the effect that it has no nexus legal, beneficial or otherwise to “Garden City Mall”.
- 23. While the burden of proof at trial lies with the Plaintiffs to prove that indeed the Defendant owned, or has any legal or beneficial affiliation with “Garden City Mall”. By presenting the instant motion at this interlocutory stage, the Defendant has pre-emptively shifted the evidential burden upon itself. The Court does not agree with the Defendant's argument notwithstanding its motion that the burden of proving ownership still rests on the Plaintiff yet it is the party that has since moved the Court seeking to be struck out from the suit asserting that it is not the owner or has any legal or beneficial affiliation with “Garden City Mall”.
- 24. To sustain such an argument on the premise of its motion would be flawed.



Palpably, by the instant motion the evidential burden was on the Defendant to tangibly place before the Court incontrovertible evidence that it has no nexus and is not the owner of Garden City Mall. Either the latter being a company or business name or otherwise, the Companies Act and Registration of Business Names Act through effectuation of services currently rendered by the Business Registration Services (BRS) by way of CR12 or a CR13 would have easily aided the Defendant's cause or put the question of ownership to rest.

25. The dicta of Supreme Court in *Gatirau Peter Munya v Dickson Mwenda Kithinji & 3 Others* [2014] eKLR, comes to mind wherein the apex Court discerned the question between what constitutes the legal and evidential burden. It held inter alia that;-

“The person who makes such allegation must lead evidence to prove the fact. She or he bears the initial legal burden of proof, which she or he must discharge. The legal burden in this regard is not just a notion behind which any party can hide. It is a vital requirement of the law. On the other hand, the evidential burden is a shifting one, and is a requisite response to an already discharged initial burden. The evidential burden is the obligation to show, if called upon to do so, that there is sufficient evidence to raise an issue as to the existence or non-existence of a fact in issue”.

26. At the risk of repetition, while the legal burden was on the Plaintiffs to prove the averments in their pleading on a balance of probabilities, by filing the instant motion the Defendant shifted the evidential burden upon itself. And by its motion dated 31/01/2024, it has failed to discharge the said burden. Consequently, Defendant's motion cannot succeed in the circumstance the same is accordingly dismissed.

Whether the Court ought to grant leave to the Plaintiffs to enjoin the Intended defendants and amend their plaint accordingly?

27. By the Plaintiffs motion, they have sought to add a raft of intended defendants to their cause of action as captured earlier in this ruling. In urging the Court to allow its motion, the Plaintiffs through Patrick Alouis Macharia Maina relied on lengthy affidavit material. Patently, the kernel of his arguments in support of the motion to enjoin some of the intended Defendant's is that he perceives the ownership and control of Garden City Mall as being complex and convoluted because it is comprised of an entangled mix of de facto and de jure ownership claims by persons and/or a group of companies that identify jointly and severally as “Actis”. Whereas as a result of the fore stated the intended Defendants are jointly, severally and or vicariously liable for the injurious act that occurred on 21/12/2019 at Garden City Mall.

28. Order 1 Rule 10(2) of the CPR exhorts the fact that the Court may order that a party deemed necessary for effectual and complete settlement of all questions raised in a suit be enjoined or added. In the case of *Departed Asians Property Custodian Board vs. Jaffer Brothers Ltd* [1999] 1 EA 55, it was stated that;-

“A clear distinction is called for between joining a party who ought to have been joined as a defendant and one whose presence before the Court is necessary in order to enable the court effectually and completely adjudicate upon and settle all questions involve in the suit. A party may be joined in a suit, not because there is a cause of action against it, but because that party's presence is necessary in order to enable the court effectually and completely adjudicate upon and settle all the questions involve in the cause or matter...For a person to be joined on the ground that his presence in the suit is necessary for effectual and complete settlement of all questions in the suit one of two things has to be shown.



Either it has to be shown that the orders, which the plaintiff seeks in the suit, would legally affect the interests of that person, and that it is desirable, for avoidance of multiplicity of suits, to have such a person joined so that he is bound by the decision of the Court in that suit. Alternatively, a person qualifies, (on an application of a Defendant) to be joined as a co-defendant, where it is shown that the defendant cannot effectually set a defence he desires to set up unless that person is joined in it, or unless the order to be made is to bind that person.”

Further in *Civicon Limited* (supra) the Court stated:

“Again, the power given under the Rules is discretionary, which discretion must be exercised judicially. The objective of these Rules is to bring on record all the persons who are parties to the dispute relating to the subject matter, so that the dispute may be determined in their presence at the time without any protraction, inconvenience and to avoid multiplicity of proceedings.

Thus, any party reasonably affected by the pending litigation is a necessary and proper party, and should be enjoined...from the foregoing, it may be concluded that being a discretionary order, the court may allow the joinder of a party as a defendant in a suit based on the general principles set out in Order 1 rule 10 (2) bearing in mind the unique circumstances of each case with regard to the necessity of the party in the determination of the subject matter of the suit, any direct prejudice likely to be suffered by the party and the practicability of the execution of the order sought in the suit, in the event that the plaintiff should succeed. We may add that all that a party needs to do is to demonstrate sufficient interest in the suit; and the interest need not be the kind that must succeed at the end of the trial.”

29. Here, the Court has taken the liberty of perusing the Plaintiffs suit and notes that the cause of actions is predominantly anchored on what appears to be false imprisonment, unlawful detention and false arrest that occurred on 21/12/2019 at Garden City Mall.

What this Court equally gathers from the Plaintiffs application is their uncertainty and lack of particularity as to the owners of Garden City Mall. The motion appears to be an omnibus attempt to include all and sundry that have a connection to Garden City Mall and not the actual proprietors. Mainstream media coverage and or correspondence from an advocate by way of the letter from the firm of Adrian Kamotho Njenga & Co. Advocates cannot in all certainty be the foundational basis of identifying proprietorship of Garden City Mall, the Defendant and or Actis.

30. Whereas the championed argument on close relationship, shell company, special purpose vehicle (SPV) de jure ownership, de facto ownership, alter ego ownership and ownership by acquisition, agreeably with the Defendant, appears to be a fishing expedition as concerns the actual proprietorship of Garden City Mall and or by extension the Defendant.
31. Again, at the risk of repetition, the Plaintiffs conundrum on proprietorship, if so, is an easy resolve on the backdrop of the provisions within the *Companies Act* and *Registration of Business Names Act* through effectuation of services currently rendered by the Business Registration Services (BRS) by way of CR12 or a CR13. By including the intended Defendants as sought would only convoluted the matter further, inconvenience or include unnecessary parties and serve the purpose of straying the Court from effectually and completely adjudicating upon and settling all questions involved and or in controversy in the suit.
32. While Order 1 Rule 9 of the CPR provides that no suit shall be defeated by reason of misjoinder or non-joinder, the Plaintiffs still have recourse to effectually enjoin the rightful party to the instant



proceedings if need be, as is the Court is not convinced and or persuaded as to why it ought to grant leave to the Plaintiffs to enjoin the 2nd to 13th Intended Defendants as sought for in the Plaintiffs motion, for no persuasive grounds.

33. Consequently, the prayer is denied, together with all the related prayers of designation of the intended Defendants, further amendment of the plaint, issuing of summons to the intended Defendants, leave to effect service of summons outside Kenya with respect to specific intended Defendants, leave to effect summons electronically upon the intended Defendants are equally declined.

On whether the Court ought to temporarily lift the Defendant's corporate veil in the interest of justice to enable the Court examine the relationship between the Defendant and 2nd to 8th and 13th intended Defendant?

34. On this question, the Court of Appeal emphasized the separation and the principles undergirding the piercing of the corporate veil, in the case of *Riccatti Business College of East Africa Limited v Kyanzavi Farmers Company Limited* [2016] eKLR. The passage deserves reproduction here in extenso: -

“This Court in *Victor Mabachi & Anor & Nurtun Bates Limited* [2013] eKLR while dealing with the issue of the distinct legal entity of corporate bodies held that:

“[A company] as a body corporate, is *persona juridica*, with a separate independent identity in law, distinct from its shareholders, directors and agents unless there are factors warranting a lifting of the veil.”

35. A useful discussion on circumstances where a court will be entitled to lift the corporate veil appears at paragraph 402 of Edition Vol. 7(1) where Halsbury's Laws of England 4th, the learned authors say:

“.....or where the court will ‘pierce (or lift) the corporate veil’, not because it considers it just to do so but because special circumstances exist indicating that it is a mere façade concealing the true facts. In identifying what is a mere façade, the motive of those behind the company will be relevant. The court will go behind the status of the company as a separate legal entity distinct from its shareholders, and will consider who are the persons, as shareholders or even as agents, directing and controlling the activities of the company. The device of a corporate structure will often have been used to evade limitations imposed on conduct by law and rights of relief which third parties already possess against a defendant, so justifying the court's ‘piercing’ (or ‘lifting’) the veil.

36. Where, however, this is not the position, even though an individual's connection with a company may cause a transaction with that company to be subjected to strict scrutiny, the corporate veil will not be pierced. Nor is the court entitled to lift the veil as against a company which is a member of a corporate group merely because the corporate structure has been used so as to ensure that the legal liability (if any) in respect of particular future activities of the company will fall on another member of the group rather than the defendant company.

37. It may be that liabilities or obligations will arise without piercing the corporate veil because there is an agency relationship between a parent company and subsidiary, or between a company and its shareholders, but this may not be inferred merely from control of the company or ownership of its shares or from the level of paid up capital. It will depend on an investigation of all aspects of the relationship between the parties and there is no presumption of such agency.”



38. The Court may lift the corporate veil in exercising its inherent jurisdiction to do justice and fairness for the ends of justice. This jurisdiction may be exercised only in special circumstances where the Court finds improper conduct, fraud or when a company is a sham, acting as an agent of the shareholders or evading tax revenues.
39. Ringera, J (as he then was) in special circumstances existing within the Defendant by either indicating that it is a mere façade concealing the true facts particularly regarding improper conduct, fraud or when a company is a sham. The Plaintiffs contestations surrounding close relationship, shell company, special purpose vehicle (SPV) de jure ownership, de facto ownership, alter ego ownership and ownership by acquisition Corporate Insurance Company Limited v Savemax Insurance Brokers Limited [2002] EA 41 found that: ...
- It is obvious, then, from all the issues we have considered that a court can lift the corporate veil subject to strict conditions being satisfied for such action to be taken.”
40. Despite seeking to lift/pierce the Defendant’s corporate veil, the Plaintiffs through Patrick Alouis Macharia failed and or omitted to depose in his affidavit material that, do not warrant an order of piercing and or lifting of the corporate veil whereas the suit has yet to be heard and or determined. Notably, the Plaintiffs heavily addressed the issue through its submissions without laying any evidential foundation in their affidavit material on the issue. Equally, this prayer must fall and is consequently denied.
41. At the end, it behooves upon me to address the following, while this Court appreciates the Plaintiffs’ industry and spirited articulation of his cause of action, it must be remembered that there is a reason why there exists trained professionals in various fields of study, as the latter are vested with the wherewithal to address with particularity the issues in their related fields of study. Why do I digress on the above? It would be useful or advisable for the Plaintiffs to engage the services of an advocate for purposes of particularity of pleadings and legal counsel as to their cause of action.
42. It would be unfortunate for the Plaintiffs’ cause of action to be lost in the realms of failure to appreciate rules of procedure or inadequacy of proper articulation of facts and law.
43. The upshot of the forgoing is that both motions fail and each party is directed to bear their own costs.

DELIVERED DATED AND SIGNED AT NAIROBI THIS 31ST DAY OF JULY, 2025

.....
JANET MULWA.
JUDGE

