



**Wanjogu & another v Kirimu (Commercial Miscellaneous Application E345 of 2024)
[2025] KEHC 11709 (KLR) (Commercial and Tax) (30 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11709 (KLR)

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

COMMERCIAL MISCELLANEOUS APPLICATION E345 OF 2024

MN MWANGI, J

JULY 30, 2025

**IN THE MATTER OF SECTION 280 OF THE COMPANIES ACT NO. 17 OF
2015, LAWS OF KENYA**

-AND-

**IN THE MATTER OF HOLDING AN ANNUAL GENERAL
MEETING OF GICHOYA DEVELOPMENT COMPANY LIMITED**

BETWEEN

JAMES COMBA WANJOGU 1ST PLAINTIFF

GICHOYA DEVELOPMENT COMPANY LIMITED 2ND PLAINTIFF

AND

LILIAN WAIRIMU KIRIMU DEFENDANT

RULING

1. The plaintiffs/applicants filed a Notice of Motion application dated 19th April 2024, under the provisions of Section 280 of the *Companies Act* and Order 51 Rule 1 of the Civil Procedure Rules, 2010, as read together with all other enabling provisions of the law. The plaintiffs pray for orders that the 1st plaintiff be granted leave to file and continue a derivative suit on behalf of the 2nd plaintiff and to hold the 2nd plaintiff's Annual General Meeting. They also pray for an order to be issued that one member of the 2nd plaintiff constitutes a quorum at the AGM notwithstanding the provisions of Article 20 of the 2nd plaintiff's Articles of Association. The plaintiffs also seek an order to be issued allowing the 1st plaintiff to transfer his shares as he wishes but in accordance with the Memorandum and Articles of Association, and an injunction order be issued restraining the defendant from acting



- as a Director or transacting any business on behalf of the 2nd plaintiff, pending the final determination of this dispute.
2. The application is premised on the grounds on the face of the Motion, and it is supported by an affidavit sworn on the same day by Mr. James Comba Wanjogu, the 1st plaintiff herein and a Director/ shareholder of the 2nd plaintiff company. He averred that he founded the 2nd plaintiff company and that he holds 51% of its shares. He stated that he included his former wife, the defendant herein, as a 49% minority shareholder. He deponed that since their divorce, the defendant has abandoned her duties, failed to attend Board meetings since 2019 without any justification whatsoever, and has paralyzed the 2nd plaintiff company's operations.
 3. Mr. Wanjogu claimed that the 2nd plaintiff's Articles of Association requires two members to form a quorum, thus the defendant's absence has prevented the 2nd plaintiff from holding meetings, filing returns, and managing its finances. He asserted that his efforts to resolve the deadlock in the 2nd plaintiff company has failed. He accused the defendant of misappropriating the 2nd plaintiff's funds, freezing its accounts, exposing it to penalties and creditor risks, and seeking division of its assets through matrimonial proceedings. He asserted that the orders being sought herein are necessary to enable the proper functioning of the 2nd plaintiff, and protect its business interests.
 4. In opposition to the application, the defendant filed a replying affidavit sworn on 21st May 2024 by Ms Lilian Wairimu Kirimu. She contended that the instant application was filed in bad faith, without disclosing ongoing proceedings in the High Court Family Division between the parties herein. She claimed that the application herein aims to undermine rulings delivered by the Family Court, which recognized the 2nd plaintiff company as matrimonial property. She contended that the 1st plaintiff's efforts to change the 2nd plaintiff's shareholding and directorship are meant to disrupt the matrimonial property proceedings. Ms Kirimu asserted that she has not abandoned the 2nd plaintiff and accused the 1st plaintiff of trying to take its full control. She cited contradictions in the 1st plaintiff's requests such as seeking to act alone while restraining her as a Director.
 5. The application herein was canvassed by way of written submissions. The plaintiffs' submissions were filed on 8th July 2024 by the law firm of Cuna & Associates Advocates, while the defendant's submissions were filed by the law firm of R.W. Mbanya & Company Advocates on 26th July 2024.
 6. Ms Cuna, learned Counsel for the plaintiffs cited the provisions of Section 238(3) of the *Companies Act*, 2015 and the case of Mohamedin Mohamed & another v Ibrahim Ismail Isaak & another [2021] eKLR, and submitted that the 1st plaintiff despite being the 2nd plaintiff's majority shareholder, cannot pass company resolutions due to a quorum requirement frustrated by the defendant. She submitted that judicial approval for a derivative suit only requires establishment of a prima facie case and judicial discretion. Counsel asserted that the defendant has acted in bad faith by failing to attend meetings since 2019, misusing the 2nd plaintiff's funds, freezing its accounts and exposing it to serious financial risks, which actions constitute negligent and deliberate breaches of duty by the defendant, justifying leave to pursue a derivative claim.
 7. Ms Cuna relied on the case of Isaiah Waweru Ngumi & 2 others v Muturi Ndungu [2016] eKLR, and argued that any claims by the defendant against the 2nd plaintiff should be handled in this forum, and as such, leave should be granted to the 1st plaintiff to pursue a derivative suit in the 2nd plaintiff's best interest. She cited the case of Giella v Cassman Brown & Company Ltd [1973] EA 358, and submitted that under Clause 31(e) of the 2nd plaintiff's Articles of Association, the defendant ought to be disqualified as a Director for being absent from Board meetings for over six (6) months without leave, despite several invitations, risking irreparable harm to the 2nd plaintiff.



8. Counsel asserted that the balance of convenience tilts in favour of granting the orders being sought under Section 280 of the *Companies Act*, to allow an Annual General Meeting to be held with one member due to the defendant's disqualification, making it impracticable to meet the quorum requirements. Ms Cuna relied on the case of Trevor Sawaya Ndwiga & 5 others v Meridian Acceptances Limited & another; Eduardo Hernandez Ciriza & 3 others (Interested Parties) [2021] eKLR, and submitted that under Clause 9 of the 2nd plaintiff's Articles of Association, a member may transfer shares freely to family members without needing Directors' approval. She argued that the proposed transfer is made in good faith to protect the 2nd plaintiff from further harm due to the defendant's negligence and to ensure its continued operation, with safeguards in place against impropriety.
9. Ms Mbanya, learned Counsel for the defendant submitted that the 2nd plaintiff was incorporated during the subsistence of the marriage between the 1st plaintiff and the defendant. She stated that the 1st plaintiff and the defendant registered much of their matrimonial property under the 2nd plaintiff's name. She submitted that the defendant filed HCC No. E078 of 2021 for division of matrimonial property, listing company-registered assets, but the 1st plaintiff opposed the said suit on grounds that company assets should not be considered matrimonial. She submitted that the Family Court in a Ruling delivered on 19th October 2023 relied on the Court of Appeal case of PWK v JKG [2015] eKLR, and disagreed with the 1st plaintiff.
10. Counsel accused the 1st plaintiff of later trying to alter the 2nd plaintiff's ownership to defeat its family business status and asserted that the instant application is a disguised attempt to remove the 2nd plaintiff from the Family Court's jurisdiction, under the guise of governance concerns. Ms Mbanya argued that the 1st plaintiff's true aim is to defeat the defendant's claim to matrimonial property held by the 2nd plaintiff. She submitted that the Family Court has already preserved the 2nd plaintiff's status quo and that the same issues are pending a Ruling in the same Court. She contended that this suit is sub judice, thus creating duplicity and violating Section 6 of the *Civil Procedure Act*, and risks having conflicting decisions from Courts of equal jurisdiction, leading to potential embarrassment and undermining of judicial authority.
11. Ms Mbanya relied on the case of Ghelani Metals Limited & 3 others v Elesh Ghelani Natwarlal & another [2017] eKLR, and asserted that as a majority shareholder, the 1st plaintiff cannot properly bring a derivative action for or against the 2nd plaintiff under the current circumstances. Counsel urged this Court to dismiss the instant application since the 1st plaintiff failed to disclose material facts, such as the order issued by the Family Court preserving the 2nd plaintiff's status quo.

Analysis and Determination.

12. I have considered the application filed herein, the grounds on the face of it, and the affidavit filed in support thereof. I have also considered the replying affidavit filed by the defendant and the written submissions by Counsel for the parties. The issues that arise for determination are -
 - i. Whether the 1st plaintiff should be granted leave to prosecute a derivative suit on behalf of the 2nd plaintiff;
 - ii. Whether the 1st plaintiff should be granted leave to hold the 2nd plaintiff's AGM and that one member of the 2nd plaintiff constitutes a quorum at the said AGM;
 - iii. Whether the 1st plaintiff should be allowed to transfer his shares as he wishes; and
 - iv. Whether an order of temporary injunction should issue against the defendant.



Whether the 1st plaintiff should be granted leave to prosecute this suit as a derivative action on behalf of the 2nd plaintiff.

13. Derivative claims are provided for under Sections 238-241 of the *Companies Act*, 2015. Section 238 defines a derivative claim as hereunder -
1. In this Part, "derivative claim" means proceedings by a member of a company-
 - a. in respect of a cause of action vested in the company; and
 - b. seeking relief on behalf of the company.
 2. A derivative claim may be brought only-
 - a. under this Part; or
 - b. in accordance with an order of the Court in proceedings for protection of members against unfair prejudice brought under this Act.
 3. A derivative claim under this Part may be brought only in respect of a cause of action arising from an actual or proposed act or omission involving negligence, default, breach of duty or breach of trust by a director of the company.
14. Under the provisions of Part XI of the *Companies Act*, this Court has the discretion to either allow or disallow an application for leave to proceed with a suit as a derivative action. In dealing with such an application, the Court must first satisfy itself that the applicant has established a prima facie case with high chances of success. In the case of *Isaiah Waweru Ngumi & 2 others v Muturi Ndungu (supra)*, the Court set out some of the factors to be considered in such an application as hereunder -
- a. Whether the Plaintiff has pleaded particularized facts which plausibly reveal a cause of action against the proposed defendants. If the pleaded cause of action is against the directors, the pleaded facts must be sufficiently particularized to create a reasonable doubt whether the board of directors' challenged actions or omissions deserve protection under the business judgment rule in determining whether they breached their duty of care or loyalty;
 - b. Whether the Plaintiff has made any effort to bring about the action the Plaintiff desires from the directors or from the shareholders. Our Courts have developed this into a demand or futility requirement where a Plaintiff is required to either demonstrate that they made a demand on the board of directors or such a demand is excused;
 - c. Whether the Plaintiff fairly and adequately represents the interests of the shareholders similarly situated or the corporation. Hence, a shareholder seeking to bring a derivative suit in order to pursue a personal vendetta or private claim should not be granted leave. In the American case of *Recchion v Kirby* 637 F. Supp. 1309 (W.D. Pa. 1986), for example, the Court declined to let a derivative lawsuit proceed where there was evidence that it was brought for use as leverage in plaintiff's personal lawsuit;
 - d. Whether the Plaintiff is acting in good faith;



- e. Whether the action taken by the Plaintiff is consistent with one of a faithful director acting in adherence to the duty to promote the success of the company would take;
 - f. The extent to which the action complained against – if the complaint is one of lack of authority by the shareholders or the company – is likely to be authorized or ratified by the company in the future; and
 - g. Whether the cause of action contemplated is one that the Plaintiff could bring directly as opposed to a derivative action.”
15. The plaintiff’s case is that the 2nd plaintiff has two Directors/shareholders, with the 1st plaintiff being the majority shareholder holding 51% of its total shares. The 1st plaintiff contended that since his divorce from the defendant, the latter abandoned her duties, she has failed to attend meetings since the year 2019, and that she has paralyzed the company’s operations. The 1st plaintiff accused the defendant of misappropriating funds, freezing the 2nd plaintiff’s accounts, exposing the 2nd plaintiff to risks, and seeking asset division through matrimonial proceedings. He stated that the defendant’s absence has made it impossible to meet quorum requirements to hold meetings, file returns, and/or manage the 2nd plaintiff’s finances.
16. The defendant on the other hand contended that the application herein aims to undermine Rulings delivered by the Family Court, which recognized the 2nd plaintiff company as matrimonial property. She contended that the 1st plaintiff’s efforts to change the 2nd plaintiff’s shareholding and directorship are meant to disrupt the matrimonial property proceedings. She asserted that as a majority shareholder, the 1st plaintiff cannot properly bring a derivative action for or against the 2nd plaintiff.
17. It is not in contest that the 1st plaintiff is the 2nd plaintiff’s majority shareholder. In the case of Sultan Hasham Lalji and 2 others v Ahmed Hasham Lalji and 4 others [2014] eKLR, the Court of Appeal held as hereunder in regard to derivative suits –
- It is the minority shareholders that are availed to the protection by the exceptions since generally majority shareholders exercise powers of the Company and control its affairs.
18. Further, in *Altaf Abdulrasul Dadani v Amini Akberazi & 3 others, Nairobi (Milimani) HCCC No. 913 of 2002 [2004] 1 KLR 95*, the Court held that –

By derivative suits, the minority shareholders(s) feeling that wrongs have been done to the company which cannot be rectified by the internal company mechanisms like meetings and resolutions, because the majority shareholders are in control of the company, come to Court as agents of the ‘wronged’ company to seek reliefs or relief for the company itself, all the shareholders including the wrong doers, and not for the personal benefit of the suing minority shareholders (s).... it is a cardinal principle in company law that it is for the company and not the individual shareholder to enforce rights and actions vested in the company to sue for the wrongs done to it and in the absence of illegality a shareholder cannot bring these proceedings in respect of irregularities in the conduct of the company’s internal affairs in circumstances where the majority are entitled to prevent the bringing of an action in relation to such matters.... However if due to an illegality a shareholder perceives that the company is put to loss and damage but cannot bring an action for relief in its own name, such shareholder can bring an action by way of derivative action... mere irregularity in internal running of a company cannot be a basis for one to bring a derivative suit for such can be rectified by a vote/resolution at the company’s meetings and if a shareholder



contemplates using a personal claim of infringement of his rights then a derivative suit will not avail as the relief must be for the benefit of the company...

19. In this instance, since the 1st plaintiff is the 2nd plaintiff's majority shareholder, he is not afforded the protection of Sections 238-241 of the *Companies Act* which provides for derivative suits. I am therefore not persuaded that the 1st plaintiff should be granted leave to prosecute a derivative suit on behalf of the 2nd plaintiff.

Whether the 1st plaintiff should be granted leave to hold the 2nd plaintiff's AGM and that one member of the 2nd plaintiff constitutes a quorum at the said AGM.

20. Upon perusal of Sections 276 & 277 of the *Companies Act*, Directors of a company may convene a General Meeting of a company at their own instance or at the instance of the members of the company. In this case, the 2nd plaintiff has only two Directors and shareholders. The 1st plaintiff contended that since their divorce, the defendant has abandoned her duties, failed to attend Board meetings since the year 2019 and has paralyzed the 2nd plaintiff company's operations. The 1st plaintiff asserted that the 2nd plaintiff's Articles of Association requires two members to form a quorum, thus the defendant's absence has prevented the 2nd plaintiff from holding meetings. The defendant on the other hand submitted that on 26th January 2023, the Family Court issued status quo orders preserving the 2nd plaintiff company.
21. It is however worth noting that a copy of the status quo orders being referred to by the defendant have not been produced before this Court. There is therefore no way for this Court to ascertain whether or not they exist. Further, the Family Court in a Ruling delivered on 18th July 2024 held that –

In my view therefore and whereas I agree with the Respondent that this Court does not have jurisdiction to deal with company issues, its jurisdiction respectfully only covers the question of whether or not either party has shares therein and what is their level of contribution and whether or not it forms matrimonial property in the manner provided under the *Matrimonial Property Act*.

I do not think this Court has jurisdiction to determine the daily operations of the company as provided under the Company's Act. The issue of shareholding, the rights of majority or minority shareholder, the question about AGM etc. are not within the mandate of this Court. Based on the above observations therefore nothing stops the company from running its daily affairs as governed by the Companies' Act.

In other words, the objection raised by the Respondent should be raised in the proper Court and not this one. The inclusion of the company as a party herein is simply to determine eventually whether it forms part of the matrimonial property as explained above.

Does the Respondent stand to suffer any loss? I do not think so. This is for the reasons stated above. No order has been issued stopping any dealings with the company. But I think for proper order and perspective and so as to assuage the parties that what the company has or does not have constitute matrimonial property it is necessary that it be brought in. (Emphasis added).

22. From the foregoing excerpt, it is evident that the Family Court found that it has no jurisdiction to deal with the issues raised herein as its jurisdiction is limited to the determination of whether the 2nd plaintiff company and the assets it owns form part of the 1st plaintiff's and the defendant's matrimonial property.



23. It is now well settled that Courts do not interfere with the internal management of companies acting within their powers. See the holding in the English case of *Foss v Harbottle* [1843] 2 Hare 261. In *Re K Boat Service* [1998] KEHC 39 (KLR) the Court held as follows -

Courts will interfere only where the act complained of is ultra vires or is fraudulent character or not rectifiable by ordinary resolution. It is really very important to companies and to the economy of the country in general, that the Court should not, unless a very strong case is made out on the facts pleaded and proved or admitted, take upon itself to interfere with the domestic forum which has been established for the management of the affairs of the company. Accordingly, acts by or on behalf which require the authority of a resolution of the company and are done without it, or are otherwise irregular, but which can be regularized by the company at a general meeting and without a special resolution and are neither ultra vires nor of a fraudulent character, are not a ground for a Court's interference upon a winding-up petition ..., or a petition to remove a director by a minority shareholder ... under the 'just and equitable' rule.

24. It is not in contestation that the 2nd plaintiff has called for and issued notices for several Board meetings, but the defendant failed to attend and/or send a proxy to represent her at the said meetings. On perusal of Clause 20 of the 2nd plaintiff's Articles of Association, a quorum for purposes of holding the 2nd plaintiff's general meeting consists of not less than two members present in person or by proxy. The defendant did not dispute having failed to attend Board meetings since year the 2019, which means that the 2nd plaintiff has not held Board and/or General Meetings since then. As a result, the 1st plaintiff has invoked the jurisdiction of this Court under Section 280 of the *Companies Act* which provides that -

1. This Section applies if for any reason it is impracticable -
 - a. To convene a meeting of the company in any manner in which meetings of that company may be convened; or
 - b. to conduct the meeting in the manner required by the articles of the company or this Act.
2. The Court may, either on its own initiative or on the application -
 - a. of a director of the company; or
 - b. of a member of the company who would be entitled to vote at the meeting, make an order requiring a meeting to be convened, held and conducted in any manner the Court considers appropriate.
3. If an order is made under subSection (2), the Court may give such ancillary or consequential directions as it considers appropriate.
4. Directions given by the Court under subSection (3) may include a direction that one member of the company present at the meeting be regarded as constituting a quorum.
5. A meeting convened, held and conducted in accordance with an order under this Section is taken for all purposes to be a meeting of the company properly convened, held and conducted.



25. The import of the above provisions were considered by the Court in the case of Radio Frequency Systems (EA) & another v Simon Horner & 2 others [2020] eKLR, where it was held that -

The substance of this provision is similar to Section 371 of the English *Companies Act*, 2015 1985. In a Jersey case of *In the Matter of Inter-Channel Pharmaceuticals Ltd* [2002] JRC 116A (10 June 2002), the Court observed as follows, regarding the Courts power under that provision.

‘We have been referred to three English Authorities namely, *In Re El Sombrero Limited* [1958] 3 WLR 900, *In Re H.R. Paul & Son Limited* [1974] 118SJ 166, and *In Re Opera Photographic Ltd*. *In Re El Sombrero* made it clear that the question raised by the word “impracticable” in the statutory provision is merely whether, in the particular circumstances of the case, the desired meeting of the company could as a practical matter be conducted. The case went on to hold that, if it is impracticable, a discretion then arose in the Court as to whether it should make an order as sought. In the *El Sombrero* case the applicant held 90% of the shares and the two respondents the remaining 10%. They were also the only directors. By absenting themselves from any meeting they were effectively preventing the majority shareholder from exercising the rights attaching to his 90% shareholding to change the board of directors. The Court made an appropriate order to convene a meeting and allow it to proceed in the absence of the quorum required by the articles.

In all the three English decisions to which we have been referred the Court in effect made it clear that the quorum provisions should not be regarded as a right vested in the minority to frustrate the wishes of the majority. The facts in *In Re Opera Photograph Limited* were very similar to those in the present case. The majority shareholder wished to dismiss a director, but was prevented from doing so because the director, who was also the other member, declined to attend the meeting of members so that the meeting was without quorum.

It would seem that the overarching purpose of Section 280 is to provide an inexpensive and speedy procedural remedy to overcome technical difficulties in a company convening, holding or conducting a meeting. It aids in the proper management of a company in the face of technical obstacles.

26. This Court concurs with the holding in the above case, and adds that one of the objectives of the legislature is enacting the *Companies Act*, 2015 was to ensure that companies are able to manage their own affairs without being hindered by difficulties in convening or conducting general meetings as prescribed by their Articles of Association or Statute. In view of the defendant’s failure to attend Board meetings and the provisions of Clause 20 of the 2nd plaintiff’s Articles of Association, the 2nd plaintiff has had no quorum for any meeting of the 2nd plaintiff to be transacted. It is therefore impractical for the 2nd plaintiff to hold a General Meeting or any other meeting whatsoever.
27. Given the said circumstances, this Court’s jurisdiction has been properly invoked to allow the 2nd plaintiff to continue operating its business without being obstructed by quorum requirements.
28. Being cognizant of the consequences that the 2nd plaintiff faces for failing to call an Annual General Meeting as provided for under Section 275A(4) of the *Companies Act*, I am persuaded that the 1st



plaintiff has made out a case to warrant this Court to grant him leave to hold the 2nd plaintiff's Annual General Meeting and for issuance of an order that one member of the 2nd plaintiff constitutes a quorum at its Annual General Meeting.

Whether the 1st plaintiff should be allowed to transfer his shares as he wishes.

29. Clause 9 of the 2nd plaintiff's Articles of Association provides that –

Any share may be transferred by a member to any child or other issue, son-in-law, daughter-in-law, father, mother, brother, sister, nephew, niece, wife or husband of such member and any share of a deceased member may be transferred by his executor or administrators to any child or other issue, son-in-law, daughter-in-law, father, mother, brother, sister, nephew, niece, widow or widower of such deceased member, and shares standing in the name of the trustees of the will of any deceased member may be transferred upon any change of trustees to the trustees for the time being of such will.

30. From the above Clause, transfer of shares by the 1st plaintiff as indicated in the Notice to transfer shares dated 11th January 2023 does not require consent and/or permission from the defendant. The defendant contended that the 1st plaintiff's efforts to change the 2nd plaintiff's shareholding and directorship are meant to disrupt the matrimonial property proceedings.

31. It must be noted that the Family Court in a Ruling delivered on 18th July 2024 held that the issue of shareholding, the rights of majority or minority shareholder, the question about the AGM, among others, are not within its mandate. It is further noted by this Court that there is no order from any Court barring the 2nd plaintiff from conducting and/or carrying on its affairs in accordance with its Articles and Memorandum of Association. If such an order exists, it was not exhibited by the defendant. Additionally, this Court earlier in this Ruling found that the defendant did not discharge her burden of proving that the Family Court issued status quo orders on 26th January 2023 preserving the 2nd plaintiff company.

32. In the premise, this Court finds that there is nothing hindering the 1st plaintiff from transferring his shares as he wishes and in accordance with the provisions of Clause 9 of the 2nd plaintiff's Articles of Association.

Whether an order of temporary injunction should issue against the defendant.

33. Interlocutory injunctions are provided for under Order 40 Rules (1)(a) and (b) of the Civil Procedure Rules, 2010, which states as hereunder -

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.



34. The conditions to be considered when dealing with an application for temporary injunction were laid down in the case of *Giella v Cassman Brown & Company Limited* [1973] EA 358, where the Court held that -

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.

35. Interlocutory injunctions are issued pending the hearing and determination of a suit and/or until further orders by the Court. Earlier in this ruling, I found that the 1st plaintiff as the 2nd plaintiff's majority shareholder is not afforded the protection of Sections 238-241 of the *Companies Act*, 2015 which provides for derivative suits, thus leave to pursue a derivative suit on behalf of the 2nd plaintiff cannot issue.

36. Court orders are not given in vain and interlocutory injunctions are not issued in perpetuity. I am of the considered view that upon delivery of the Ruling in respect to the application herein, I will have conclusively determined the respective rights of the parties herein, and there will be nothing left for determination to warrant this Court to grant an interlocutory injunction as sought by the 1st plaintiff.

37. In the end, it is my finding that an order of temporary injunction against the defendant cannot issue in this case.

38. In the circumstances, I am persuaded that the application herein is partly merited. It is hereby allowed in the following terms –

- i. That the 1st plaintiff is hereby granted leave to hold the 2nd plaintiff's AGM within fourteen (14) days from the date of delivery of this Ruling;
- ii. An order is hereby granted that one member of the 2nd plaintiff shall constitute a quorum at the said AGM notwithstanding the provisions of Clause 20 of the 2nd plaintiff's Articles of Association;
- iii. An order is hereby granted allowing the 1st plaintiff to transfer his shares as he wishes, but in accordance with the 2nd plaintiff's Memorandum and Articles of Association; and
- iv. Each party shall bear its own costs.

It is so ordered.

**DELIVERED, DATED, AND SIGNED AT NAIROBI ON THIS 30TH DAY OF JULY, 2025.
RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM**

NJOKI MWANGI

JUDGE

In the presence of:

Ms Cuna for the applicant

Ms Muriuki h/b for Mr. Mbanya for the respondent

Ms B. Wokabi – Court Assistant.

