



Executrix of the Estate of Ramesh Chander Sharma v Swami Investments Limited (Commercial Appeal E173 of 2022) [2025] KEHC 12483 (KLR) (Commercial and Tax) (1 September 2025) (Judgment)

Neutral citation: [2025] KEHC 12483 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL APPEAL E173 OF 2022
JWW MONG'ARE, J
SEPTEMBER 1, 2025**

BETWEEN

**EXECUTRIX OF THE ESTATE OF RAMESH CHANDER
SHARMA APPELLANT**

AND

SWAMI INVESTMENTS LIMITED RESPONDENT

(Being an appeal from the Ruling and Order of Hon. D.W Mburu, SPM dated 8th July 2022 at the Magistrates Court at Milimani, Nairobi Civil Case No. No.E11313 of 2021)

JUDGMENT

Introduction and Background

1. The Appellant is appealing a ruling delivered on 8th July, 2022 by the subordinate court that allowed prayers 3 and 5 of the Respondent's application dated 21st September, 2021 that the Appellant be restrained from executing instructions on behalf of the Respondent and that the Appellant provides a full and accurate account of all remitted accounts regarding the Respondent's dealings with the Appellant since Ramesh Sharma's ('the deceased') demise.
2. The Appellant, through its Memorandum of Appeal dated 22nd July 2022, states that the learned magistrate erred by granting final or non-conservatory orders without a full hearing on the merits, which is contrary to the law in that the application, though filed under Order 40 Rule 1 & 2 of the Civil Procedure Rules, which typically seek interim reliefs like temporary injunctions, sought and was granted final reliefs at an interlocutory stage. That prayer 3 which was granted, was final in nature and strikingly similar to prayer (b) of the original Plaintiff and that the orders granted were not injunctive



and severely prejudiced the Appellant by denying an opportunity to cross-examine the Respondent's evidence.

3. In its submissions, the Appellant cites various authorities stating that interim orders should not finally determine the substantive dispute and that final orders cannot be issued at an interlocutory stage. That the learned magistrate misapplied the provisions of Order 40 Rule 1 & 2 of the Rules, exceeding the court's jurisdiction and the Appellant contends that the Respondent's Director, BHAVIN ASHWIN GUDKA, committed perjury by providing false statements under oath. That specifically, the Respondent alleged that Apartment GF1 fetched rent, while an email from the Director's brother (Exhibit VM-5) stated the same apartment was incomplete and never occupied. The Appellant submits that it produced audited accounts and rental analyses to dispute the Respondent's claims about omitted apartments and uncollected rent.
4. The Appellant argues that the false statements undermine the integrity of the Respondent's claim and that the subordinate court's downplaying of the perjury issue was an error. She further submits that there are inconsistencies in the Respondent's claim and locus standi in that the Respondent initially instituted a High Court case (HCCOM No. E675 OF 2021) claiming Kshs.15,926,074.00/=, but later changed the claim to Kshs.14,846,074.00/= in the subordinate court (MCCC E11313 of 2021).
5. The Appellant states that the fresh claim of Kshs.14,846,074.00/= is not supported by any proof and a demand letter for Kshs.15,926,074.00/= was sent on behalf of Kausak Ramji Gudka, the actual instructing client, but the suit was instituted by a different party claiming a different amount, which the Appellant describes as a deliberate attempt to mislead and manipulate facts. The Appellant submits that the Respondent may lack locus standi to file the suit in the subordinate court. The Appellant highlights inconsistencies in the Respondent's counsel's submissions regarding rent collection beyond November 2020, as the adduced accounts covered only up to November 2020.
6. The Appellant argues that the citation of parties in the Respondent's application was legally defective as the 1st Respondent/Defendant was described as trading as the legal representative of the deceased, while the 2nd Respondent/Defendant was deemed to be the Estate of the deceased. The Appellant explains that when a sole proprietor dies, their business ceases to exist, and all assets and liabilities become part of their personal estate, to be handled by the executor. The Appellant submits that one cannot sue the estate directly as it cannot represent itself; instead, the executor should be sued. That prayer 2 of the Respondent's application, which sought to direct the Appellant to cease dealing with the affairs of the firm of the deceased, was misplaced because the firm has been wound up but the Appellant, as the appointed executrix through a valid will, has the legal right to deal with the deceased's estate.
7. In conclusion, the Appellant requests that the appeal be allowed with costs, and the ruling of the subordinate court and all consequential orders given on 8th July, 2022, be set aside in their entirety.
8. The Respondent did not submit on the appeal but I note that in some of its responses on record, the Respondent believes the orders issued are not a final determination of the matter but rather interlocutory remedies and that the orders of ceasing transactions and producing accounts are intended to maintain the status quo of accounts and transactions handled by the deceased advocate pending the hearing and determination of the suit in the Magistrates Court which concerns the Appellant's alleged illegal lien of monies held by the Defendants.
9. The Respondent states that the Appellant claims the held funds are legal fees for services rendered by the deceased advocate's firm and the orders for production of accounts are crucial for the Appellant to justify the alleged lien and for the full and just litigation of the matter.



Analysis and Determination

- 10. I have gone through the record and the submissions that I have highlighted above. The main issue for determination is whether the appeal is merited and whether the court should set aside the orders of the subordinate court. The Appellant has grounded her appeal on four issues: erroneous granting of final orders at interlocutory stage, Perjury by the Respondent’s Director, inconsistencies in the Respondent’s claim and locus standi and; improper citation of parties and the deceased’s estate. On the orders issued being final, I note that the learned magistrate in the ruling, acknowledged that the suit revolves around several questions of fact which could not be determined at that interlocutory stage and must await full trial. The learned magistrate also noted that the most of the prayers in the application are final in nature and could not be granted at the interlocutory stage and that the court could only issue conservatory orders to preserve the status quo.
- 11. It is therefore clear that the learned magistrate was circumspect in the orders he could issue and hence proceeded to issue the orders restraining the Appellant from executing instructions on behalf of the Plaintiff and directing the Appellant to render accounts. In my view, these orders are typically issued during the interlocutory stage to preserve the status quo or prevent irreparable harm pending the final determination of the case and cannot be deemed as final orders. For an interim restraining order to be considered final, it would need to effectively resolve the core dispute with no further issues left for adjudication (see Barclays Bank of Kenya Ltd v Banking, Insurance & Finance Union (Kenya) [2019] KECA 408 (KLR). As noted by the learned magistrate, many factual issues remain to be resolved at trial and the granting of the impugned orders did not determine all the issues between the parties. It is therefore my finding that the orders issued by the subordinate court were interim and not final and that they were meant to preserve the status quo of the matters regarding the accounts and transactions pertaining to the Respondent pending hearing and determination of the suit.
- 12. On the alleged perjury by the Respondent’s director and inconsistencies in the Appellant’s claim, I find that this is an issue for trial before the subordinate court and this court will not venture into the arena of the disputed evidence as urged by the Appellant. On the improper citation of the parties and locus of the Respondent, I note that this impropriety is not prejudicial and does not go to the root of the claim as the Appellant is admittedly the executrix of the deceased’s estate and understands the case facing her in that capacity. I also find that the issue of who was the actual instructing client and whether the monetary claim is supported by proof is also a matter for the trial court at the hearing.

Conclusion and Disposition

- 13. In the upshot, the Appellant’s appeal is dismissed with costs to the Respondent. It is so ordered.

DATED SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 1ST DAY OF SEPTEMBER 2025

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J.W.W. MONGARE

JUDGE

In the presence of

- 1. Ms. Awiti holding brief for Ms. Rabongo for the Plaintiff.
- 2. Ms. Wanjau holding brief for Mr. Hassan for the Defendant.
- 3. Amos- Court Assistant

