



**Gordon v Mwathi & another (Civil Suit E371 of 2023)
[2024] KEHC 284 (KLR) (Commercial and Tax) (25 January 2024) (Ruling)**

Neutral citation: [2024] KEHC 284 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL SUIT E371 OF 2023
PM MULWA, J
JANUARY 25, 2024**

BETWEEN

GRIBAN ODUOR GORDON PLAINTIFF

AND

DENNIS MBITHI MWATHI 1ST DEFENDANT

NATIONAL BANK OF KENYA 2ND DEFENDANT

RULING

1. Before the court for determination is the 1st defendant's preliminary objection (PO) dated November 15, 2023 and his Notice of Motion application dated November 25, 2023.
2. In his P.O the 1st defendant contended that this suit is misconceived, frivolous and devoid of merit on the grounds that the 1st defendant is a stranger to the allegations filed in this suit as the subject matter relates to a bank account held with the 2nd defendant that does not bear his name. That the proper party to be sued would be the business entity who is the owner of the said bank account.
3. In the application, the 1st Defendant seeks to have the instant suit struck out similar grounds similar to those in the PO and contends that he was wrongly sued. That the subject matter of the suit is a bank account under the name of a business entity and not his name.
4. In response to the PO and the application, the plaintiff filed two replying affidavits both sworn by himself on 7/12/2023 and 8/12/2023 respectively.
5. The plaintiff averred that he and the 1st defendant registered a business named Griden Investment Ltd and subsequently opened a bank account with the 2nd defendant under the name of the business. That sometime in 2017, the 1st and 2nd defendants conspired to fraudulently remove the plaintiff as a



signatory to the said bank account and replaced him with another signatory. This led to the plaintiff not to receive any benefits in the business in the form of profits which were to be shared on a 50/50 basis.

6. The Plaintiff asserted that the PO did not raise any issues of law and was misplaced and ought to be dismissed.

Analysis and Determination

7. The plaintiff instituted this suit against the defendants vide a plaint dated 7/7/2023. His case was that he and the 1st defendant registered a business titled Griden Investment Ltd and subsequently opened a bank account with the 2nd defendant under the name of the business. That the 1st and 2nd defendants fraudulently, without the plaintiff's consent as required by the law, removed and replaced him as a signatory to the said bank account.
8. Based on the foregoing, the plaintiff prayed inter alia for judgement against the defendants for an order to find his removal as signatory void and an order to restore him to that position.
9. It is clear from the plaint that the claim revolves around the alleged fraudulent and illegal removal and replacement as signatory to the business bank account by the defendants. This is despite the fact that the subject bank account is held in the name of the business entity formed by the plaintiff and the 1st defendant.
10. I find that the suit was instituted against the correct parties contrary to the averments of the 1st defendant. The 1st defendant applicant cannot purport to shut the plaintiff from pursuing his case where he believes that fraud was perpetuated to deny him his entitlement.
11. The notice of PO dated 15th November 2023 and supported by the application dated 25th November 2023 lack merit and are hereby dismissed with costs to the plaintiff/respondent.

RULING DELIVERED, DATED AND SIGNED AT NAIROBI THIS 25TH DAY OF JANUARY 2024.

P. MULWA

JUDGE

In the presence of:

Mr. Nabenda – for Plaintiff

N/A – for 1st Defendant/Applicant

Mr. Kipsigei h/b for Mr. Ligami - for 2nd Defendant

