



**Gheewala v Rural Housing Estate Limited; Gheewla & 2
others (Interested Parties) (Insolvency Petition E027 of 2022)
[2024] KEHC 3143 (KLR) (Commercial and Tax) (22 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 3143 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INSOLVENCY PETITION E027 OF 2022**

MN MWANGI, J

MARCH 22, 2024

**IN THE MATTER OF THE COMPANIES ACT NO.17 OF 2015
IN THE MATTER OF INSOLVENCY OF RURAL HOUSING ESTATES LIMITED**

BETWEEN

ELESHKUMAR CHANDRAKANT GHEEWALA PETITIONER

AND

RURAL HOUSING ESTATE LIMITED RESPONDENT

AND

SHRIKESH GHEEWLA INTERESTED PARTY

MUKTA CHANDRAKANT GHEEWALA INTERESTED PARTY

MAMTA CHANDRAKANT GHEEWALA INTERESTED PARTY

RULING

1. There are two applications for determination. The first one is dated 11/10/2022 filed by the 1st proposed interested party, whereas the second one dated 12/10/2022 was brought by the 2nd and 3rd proposed interested parties.
2. In the first application, the 1st proposed interested party (hereinafter the 1st applicant) seeks an order to be joined as an interested party to the petition and to be granted leave to file a replying affidavit to oppose the petition.
3. The 1st applicant deposed that the respondent forms part of the estate of the late Chandrakant Shamjibhai Gheewala (deceased) and that the insolvency of the respondent and other proceedings in



relation thereto are sub judice as the same is currently the subject of Nairobi High Court Succession Cause No. 264 of 1994 In the Matter of the Estate of Chandrakant Gheewala.

4. Further, that in the Succession Cause, the Court issued orders on 20/12/2018 for status quo to be maintained so as to preserve the estate of the deceased, and as such, any orders touching on the insolvency of the respondent by this Court amounts to abuse of the Court process.
5. The 1st applicant averred that he is one of the beneficiaries of the estate of the deceased and has a beneficial interest in the respondent. He stated that it will be in the interest of justice for the application to be allowed in order to protect the interest of the 1st applicant as a beneficiary of the estate of the deceased and the state generally.
6. In the 2nd application, the 2nd and 3rd proposed interested parties (hereinafter the 2nd and 3rd applicants) also pray to be joined in the petition as interested parties and to be granted leave to file any pleadings and/or affidavits in the proceedings.
7. They averred that the respondent company is one of the entities comprising the estate of the deceased and which were the subject to the Mediation Settlement Agreement signed on 31/7/2019 in Nairobi High Court Succession Cause No.264 of 1994 *In the Matter of the Estate of Chandrakant Gheewala*, in which the 2nd and 3rd applicants are beneficiaries, and that the 2nd applicant is the Executrix of the estate.
8. The 2nd and 3rd applicants contended that the petition herein seeks to liquidate the respondent prior to finalization of the succession process in the aforementioned Succession Cause, which liquidation would greatly prejudice the estate. They pray to be joined to represent their interests in the matter.
9. In response to the first application, the petitioner filed a replying affidavit sworn on 7/12/2022. He averred that the petition filed herein seeks to liquidate the respondent as it has been unable to pay its debts and that the business of the company has been suspended for more than 13 years due to management challenges, and that the respondent company is not one of the assets comprising the estate of the deceased, but is a company in its own right, with shareholding.
10. The petitioner asserted that there is no relationship between the Succession Cause and the current application and that the 1st applicant has not shown any basis to be joined in the liquidation petition, and in any case, he can raise the matter before the Liquidator.
11. The petitioner opposed the second application through a replying affidavit sworn by himself on 25/10/2022.
12. His averments are similar to those in the replying affidavit sworn on 7/12/2023 in opposition to the 1st application.
13. Each of the 1st, 2nd and 3rd applicants filed supplementary affidavits in response to the petitioner's replying affidavits.
14. The 1st applicant denied that the respondent company has been unable to pay its debts and that the business of the respondent company has been suspended for more than 13 years. He reiterated that he has established clear grounds to be joined in this matter, as he is a beneficiary of the estate of the deceased, and he was bequeathed part of the respondent company.
15. In her supplementary affidavit, the 2nd applicant deposed that she agreed and fully associated with the supplementary affidavit of the 3rd applicant sworn on 30/6/2023.



16. The 3rd applicant, in her supplementary affidavit asserted that the applicants have an identifiable stake or legal interest in the proceedings before this Court, which will not be well articulated unless they appear in the proceedings and champion their own causes.

Analysis And Determination.

17. All of the parties herein filed written submissions which this Court has analyzed and considered. The crux of the matter is whether the applicants' applications to be joined as interested parties to the petition are merited.
18. The 1st applicant submitted that he had demonstrated his stake in the petition as he had been bequeathed 25% shareholding in the respondent company as stipulated in the Mediation Settlement Agreement. Further, that if the petition is allowed without his participation, and the respondent company is liquidated, it would be impossible to enforce the Mediation Settlement Agreement in the Succession Cause, as the bequest of the respondent company to the beneficiaries would be non-existent.
19. The 2nd and 3rd applicants also submitted that they have identifiable stakes in the respondent company as the 2nd respondent is the Executrix of the estate of Chandrakant Gheewala (deceased) and the 3rd respondent is a beneficiary of the estate. It was submitted that the 2nd and 3rd applicants would suffer prejudice if this matter was to be determined without an opportunity for them to file pleadings and to be heard.
20. On the other hand, the petitioner submitted that the fact that the applicants are beneficiaries to the estate of the deceased does not automatically make them parties necessary to these proceedings, and that their stake is only limited to the shares of the deceased and not in the running of the respondent company.
21. It is the petitioner's contention that the proposed interested parties will not suffer any prejudice in the event that they are not added as interested parties to the petition, as they will only delay the proceedings.
22. Joinder of parties is provided for under Order 1 Rule 10(2) of the *Civil Procedure Rules*, 2010, which states as follows-

"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." (emphasis added).

23. An interested party was aptly described in the Supreme Court case of *Trusted Society of Human Rights Alliance v Mumo Matemu & 5 others*, Supreme Court Petition No. 12 Of 2013 [2014] eKLR, where it was held as follows-

"An interested Party is one who has a stake in the proceedings, though he or she was not party to the cause ab initio. He or she is one who will be affected by the decision of the court when it is made, either way. Such a person feels that his or her interest will not be well articulated unless he himself or she herself appears in the proceedings."



24. The applicants and the petitioner herein are family members who are beneficiaries to the estate of the late Chandrakant Gheewala.
25. In Succession Cause No. 264 of 1994 In the Matter of the *Estate of Chandrakant Gheewala*, a Mediation Agreement dated 31/7/2019 was entered into, whereby the petitioner herein, and the applicants agreed to distribute the estate of the deceased amongst themselves. The said agreement was adopted as an order of the Court on 16/10/2019 by consent of the parties. The Mediation Agreement and the consent order are annexed as 'SG-3' and 'SG-4' to the 1st applicant's supporting affidavit.
26. The Mediation Agreement and consent order state that the petitioner was allocated 26% shareholding of the respondent company, the 1st applicant was allocated 37.7% shareholding and the 3rd applicant was allocated 36.25% shareholding in the respondent company.
27. It is evident from the Mediation Agreement, that the respondent company forms part and parcel of the estate of the deceased in so far as the shares of the deceased in the company are concerned. The parties voluntarily entered into a Mediation Agreement dictating the method of distributing the assets of the deceased.
28. Given that the shares of the company are part of the assets to be distributed, and an agreement was reached as to the shares allocated to the applicants by virtue of being beneficiaries of the estate of the deceased, it goes without saying that the applicants before this Court have an interest and stake in the affairs of the respondent company, especially in the petition which seeks to liquidate the said company.
29. Issues have been raised on the implementation of the Mediation Agreement and on the liquidation petition being sub judice due to the existence of the Succession Cause. These are issues that convince this Court that the applicants' participation in these proceedings will be necessary for the Court to effectually and completely adjudicate on and settle all the questions involved in the petition.
30. The upshot of the foregoing is that the applications are merited. They are granted as prayed. The 1st, 2nd and 3rd applicants are hereby joined as interested parties in the petition. Costs are awarded to the applicants.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 22ND DAY OF MARCH, 2024.
RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

NJOKI MWANGI

JUDGE

In the presence of:

Ms Mwaniki h/b for Mr. Kimathi for the 1st proposed interested party

Ms Mukui h/b for Mr. Kimamo for the 2nd & 3rd proposed interested parties

Ms Kale h/b for Mr. Nyaga for the petitioner

Ms B. Wokabi – Court Assistant.

