



REPUBLIC OF KENYA



**Oduor & 2 others v Ogol & another (Commercial Cause E957 of 2021)  
[2024] KEHC 4513 (KLR) (Commercial and Tax) (18 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 4513 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL CAUSE E957 OF 2021  
DO CHEPKWONY & A MABEYA, JJ  
MARCH 18, 2024**

**BETWEEN**

**WILLIAM EVANCE ODUOR ..... 1<sup>ST</sup> APPLICANT  
GEORGE OTIENO RADOL ..... 2<sup>ND</sup> APPLICANT  
TISA SUITES & LOUNGE LIMITED ..... 3<sup>RD</sup> APPLICANT**

**AND**

**STEPHEN ODHIAMBO OGOL ..... 1<sup>ST</sup> RESPONDENT  
KCB BANK KENYA LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. This ruling is in respect of the Applicant's Notice of Motion application dated 16<sup>th</sup> December 2021 brought under Sections 1A, 3A of the [Civil Procedure Act](#) and Order 51 rule 1 of the [Civil Procedure Rules](#). The application was couched in the following terms;
  - a. Spent;
  - b. Spent;
  - c. Spent;
  - d. Spent;
  - e. Spent;
  - f. That the 1<sup>st</sup> Respondent by himself, his servants, agents and or employees be compelled by an order of this court to disclose any other account, if any operated in the name of 3<sup>rd</sup> applicant/ plaintiff or Tisa Suite & Lounge pending the hearing and determination of this suit.



- g. That the 1<sup>st</sup> Respondent be compelled by an order of this court to render true accounts and bank statements of any monies received and or paid in relation to 3<sup>rd</sup> applicant/plaintiff or Tisa Suite & Lounge, from 10<sup>th</sup> July 2018 to date, pending the hearing and determination of this suit.
  - h. That the 2<sup>nd</sup> Respondent by an order of this court, be compelled to release to the applicants bank statements of all accounts operated by or associated with 3<sup>rd</sup> applicant/plaintiff or Tisa Suite & Lounge from 4<sup>th</sup> April 2018 to date, pending the hearing and determination of this suit.
  - i. That the 1<sup>st</sup> Respondent be compelled not to undertake the running and operation of 3<sup>rd</sup> applicant/plaintiff or Tisa Suite & Lounge without the involvement and approval of the applicants herein, pending hearing and determination of this suit.
  - j. That the cost of this application be provided for.
2. The application was premised on the grounds on the face of the application and the supported by the affidavit of William Evance Oduor and Geirge Otieno Radol Modi dated 16<sup>th</sup> December, 2021.
  3. The deponents aver that the applicants and the 1<sup>st</sup> Respondent are directors of the 3<sup>rd</sup> Applicant and before the joint venture, the 1<sup>st</sup> Respondent operated a business in the name of Tisa Suites & Lounge. The business ran into financial turbulence and the 1<sup>st</sup> Respondent invited the 1<sup>st</sup> and 2<sup>nd</sup> Applicants to partnership which business latter transformed to a company by the name Tisa Suites & Lounge Limited incorporated on 10<sup>th</sup> July, 2018.
  4. The 1<sup>st</sup> and 2<sup>nd</sup> applicants deposed that Tisa Suites & Lounge ceased operation on 4<sup>th</sup> April, 2018 to pave way for Tisa Suites & Lounge Limited and Account No. 1217186263 in the name of Tisa Suites & Lounge ceased to operate. That the 1<sup>st</sup> Respondent in collusion with the 2<sup>nd</sup> Respondent's agents, servants or employees continued to operate Tisa Suites & Lounge interchangeable with Tisa Suites & Lounge Limited denying the applicants any income from the business.
  5. They averred that the 3<sup>rd</sup> Applicant operated Account No. 1236299175 with the 2<sup>nd</sup> Respondent at Kisumu branch with the signatory of either two directors to operate the account. That the 2<sup>nd</sup> Resondent had received authority from Tisa Suites & Lounge Limited that the applicants can communicate to the 2<sup>nd</sup> Respondent through email and facsimile. The 1<sup>st</sup> Respondent and agents, servants and employees of the 2<sup>nd</sup> Respondent colluded to open and operate the accounts belonging to Tisa Suites & Lounge and 3<sup>rd</sup> applicant in exlusion of the 1<sup>st</sup> and 2<sup>nd</sup> Applicants.
  6. The 2<sup>nd</sup> Respondent wrote to the applicants and the 1<sup>st</sup> Respondent on 8<sup>th</sup> January, 2019 demonstrating that they had detected something fishy. The 1<sup>st</sup> Respondent fraudulently trasferred monies belonging to Tisa Suites & Lounge and 3<sup>rd</sup> applicants to other bank accounts.
  7. In response to the Appellants' application dated 16<sup>th</sup> December, 2021, the 1<sup>st</sup> Respondent filed a Replyig Affidavit dated 2<sup>nd</sup> February, 2022 sworn by the 1<sup>st</sup> Respondent. In the said affidavit, he deposed that in April, 2018 he converted his business name to Private Limited Company to Tisa Suites And Lounge Limited and issued shares to the 1<sup>st</sup> and 2<sup>nd</sup> Applicants.
  8. That the 1<sup>st</sup> and 2<sup>nd</sup> Applicants were not interested in the operation of the busness but wanted to take out money out of the business. The 1<sup>st</sup> and 2<sup>nd</sup> Applicants would seek exorbitant payments for attending meetings in Kisumu and would demand dividends even as the business was still struggling.



- They would take advantage of the mandate at the bank allowing two directors to sign cheque to withdraw cash from the bank for their personal benefit without his knowledge.
9. The 1<sup>st</sup> Respondent deposed that he entered into a mediated agreement with the 1<sup>st</sup> Applicant on refunding the sums he contributed into the business on 11<sup>th</sup> February, 2019. The agreement required him to pay a sum of Kshs. 931,000/= as a way of amicable settlement for him to relinquish shareholding and directorship in the company. On 24<sup>th</sup> October, 2019 he fulfilled his obligation as per the agreement and entered into a resignation and general release agreement with the 1<sup>st</sup> applicant. Pursuant to a meeting between him and the 1<sup>st</sup> and 2<sup>nd</sup> Applicants, on 22<sup>nd</sup> September, 2021 the 2<sup>nd</sup> Applicant also resigned as a director of Tisa Suites & Lounge Limited.
  10. That he is aware of the sums owed by Tisa Suites & Lounge Limited to Kenya Revenue Authority and has reached a settlement with KRA on payment by instalments of the sums owed.
  11. That in view of the Applicants refusal to effect changes in the directorship and shareholding of Tisa Suites & Lounge Limited, the applicants do not have a cause of action against him. The applicants only came to court to malign his name and continue holding him and the 3<sup>rd</sup> Applicant hostage by refusing to effect the changes at the companies registry.
  12. On 21<sup>st</sup> March, 2022, this court issued directions that the application be canvassed by way of written submissions. Both parties complied and filed their respective submissions in support and in opposition to the application which this court shall proceed to consider in its analysis and determination.

### **Analysis and determination**

13. I have considered both the Notice of Motion together with the written submissions by both parties alongside the cited authorities. The issues for determination are;
  - a. Whether the applicants have established a prima facie case to warrant the grant of the orders sought; and
  - b. Who bears the costs of this application.
14. On whether the Applicants have established a prima facie case, this court is guided by the principles and conditions to be considered in determining an application seeking interlocutory injunction as enunciated in the case of *Giella v Cassman Brown & Co Ltd* (1973) 358 at Pg. 360 where the court stated that:-

“First, 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 (*E.A. Industries v Trufoods* [1972] E.A. 420.)”
15. Further, the Court of appeal in *Mrao Ltd v First American Bank of Kenya Limited & 2 Others* [2003] eKLR, stated that a prima facie case is one which on the material presented in court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the Respondent.
16. In the present case, the 1<sup>st</sup> and 2<sup>nd</sup> Applicants have submitted that they alongside the 1<sup>st</sup> Respondent are the directors of the 3<sup>rd</sup> Applicant and the 1<sup>st</sup> Respondent has been running the 3<sup>rd</sup> to the exclusion of the 1<sup>st</sup> and 2<sup>nd</sup> Applicants. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents are aware of the new account number operated in



the name in the name of Tisa Suite & Lounge which business entity ceased its operations. It is on that basis that the applicants pray and submit that they have a prima facie case against the Respondents.

17. The Applicants have urged that the Applicants will suffer prejudice for the reasons that; the interest of the 1<sup>st</sup> and 2<sup>nd</sup> Applicants as shareholders are at risk, the Respondents have been acting in exclusion of the 1<sup>st</sup> and 2<sup>nd</sup> Applicants and the 1<sup>st</sup> Respondents purports to disown the 1<sup>st</sup> and 2<sup>nd</sup> Applicants from directorship and finally the te 1<sup>st</sup> Respondent continues to operate Tisa Suite & Lounge which entity ceased opearations.
18. On the balance of convenience, the Applicants submitted that they stand to suffer great harm. Again, it was submitted that on 4<sup>th</sup> January, 2022, parties consented to allowing the directors work as a unit and so far the parties are doing fine with the iternal arrangements. It was their submission that the application is allowed and no party will be prejudiced.
19. On the part of the 1<sup>st</sup> Respondent, has submitted that the Applicants do not have a prima facie case as the 1<sup>st</sup> and 2<sup>nd</sup> applicants are not members of the 3<sup>rd</sup> Applicant Company for having relinquished their right to participate in the affairs of the company and resigning as directors and shareholders of the 3<sup>rd</sup> Applicant. The 1<sup>st</sup> Applicant has refused to facilitate the changes in his e-citizen account since October, 2019 despite acknowledgment of receiving compensation for his sareholding. In regards to the 2<sup>nd</sup> Applicant it was since September, 2021.
20. According to the 1<sup>st</sup> Respondent, no explanation has been given by the Applicants as to why they have not effected changes yet they are bound by their signatures and the documents they signed. In short the 1<sup>st</sup> and 2<sup>nd</sup> Applicants are no longer directors of the 3<sup>rd</sup> Applicant and consequently have no locus standi to file a suit on behalf of the 3<sup>rd</sup> Applicant.
21. I have had the opportunity to read through the pleadings and peruse the annextures attached thereto and note that there are resignation agreements signed by the Applicants. This fact was never disclosed by the applicants in their own documents. It is clear that the the applicants had intended to resign from shareholding of the company and therefore can not turn around and claim that their right have been infringed.
22. The Applicants had a duty to establish a prima facie case before this court. In the case of *Nguruman Limited v Jan Bonde Nielsen & 2 Others* [2014] eKLR, the Court of Appeal held thus:-

“We reiterate that in considering whether or not a prima facie case has been established, the court does not hold a mini trial and must not examine the merits of the case closely. All that the court is to see is that on the face of it the person applying for an injunction has a right which has been or is threatened with violation.”
23. In the circumstances of this case, the applicants have not established a prima facie case to warrant the grant of the prayers sought. I therefore find that the application dated 16<sup>th</sup> December, 2021 lacks merit and the same is hereby dismissed wth costs to the 1<sup>st</sup> Respondents.

It is so ordered.

**RULING DATED AND SIGNED AT KIAMBU THIS 15<sup>TH</sup> DAY OF MARCH , 2024.**

**D. O. CHEPKWONY**

**JUDGE**

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 18<sup>TH</sup> DAY OF MARCH , 2024.**



**ALFRED MABEYA**  
**JUDGE**

