

KENYA / JUDGMENT

Lettau v Berten [2026] KEHC 13719 (KLR)

[2026] KEHC 13719 (KLR)

COURT

High Court

CASE / FILE NUMBER

Commercial Petition E005 of 2025

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REPUBLIC OF KENYA IN THE HIGH COURT AT MOMBASA COMMERCIAL AND TAX DIVISION
COMMERCIAL PETITION NO. E005 OF 2025 IN THE MATTER OF: PARADISO TOYS LIMITED AND
IN THE MATTER OF: SECTION 424(1)(G) AND 425 (1) (A) AND (C) OF THE INSOLVENCY ACT NO.
18 OF 2015 BETWEEN PETRA LETTAU PETITIONER AND
YVES BERTEN RESPONDENT

JUDGMENT**A. INTRODUCTION**

1. When personal and business relationships are so closely intertwined, it can become difficult to discern where one begins and where the other ends. This petition reflects that very issue, a dispute arising from the breakdown of the relationship between the Petitioner and the Respondent and the affairs of Paradiso Toys Limited – a company borne out of the relationship between the parties.
2. The Petitioner, a 33.33% shareholder and former director of Paradiso Toys Limited (the company), seeks liquidation of the Company under section 424(1)(g) of the Insolvency Act, alleging oppression following the breakdown of her relationship with the Respondent.
3. The Respondent maintains that the dispute is personal, that the Petitioner voluntarily disengaged from the Company, and that she is seeking to force a buy-out outside the mechanisms provided by the Articles.
4. Earlier arbitral proceedings were terminated by consent, leaving the parties to pursue their remedies before the Court.
5. The issue, therefore, is whether the circumstances disclosed warrant the exceptional remedy of liquidation. B. THE PETITIONER'S CASE
6. The Petitioner's case is set out principally in the Petition dated 19 August 2025 and the matters arising from the proceedings previously undertaken between the parties.

7. The Petitioner avers that the Company was incorporated in 2002 and acquired the properties known as Kwale/Galu Kinondo/721 and Kwale/Galu Kinondo/722 in Diani. The Company subsequently developed the properties and operates thereon a high-end boutique hotel known as Zum Zum Beach House.
8. She states that she was one of the original subscribers to the Company's Memorandum of Association and remains a shareholder holding 33.33% of the issued shares. She was also a director of the Company and, according to her, was involved in its day-to-day affairs and development.
9. The Petitioner states that approximately Euros 500,000 generated from the sale of a property known as Turtle Beach House, which was registered in her name, was reinvested into the Company during the construction and development of the Company's premises, an establishment with six guest bedrooms and one presidential suit together with a residential wing. It is the Petitioner's case that the business attracts foreign clientele and generates substantial revenue. 10. The Petitioner further states that, despite her contribution to the Company and her involvement in its affairs, she was not remunerated and did not receive dividends. She contends that she relied, in part, on a joint account with the Respondent for her upkeep while residing at the Company's premises. 11. According to the Petitioner, the relationship between the parties deteriorated in or about 2021. She alleges that following the breakdown of the relationship, the Respondent excluded her from the Company's affairs, caused her to cease participating in its management and effectively forced her out of the premises where she had previously resided. 12. The Petitioner further alleges that the Respondent withdrew funds from Company and/or personal accounts to which she had previously had access, thereby leaving her without a source of income. She maintains that these actions were part of a broader attempt to exclude her from the Company and deprive her of the benefit of her shareholding. 13. The Petitioner avers that she subsequently discovered that an Extra-Ordinary General Meeting had been convened for 25 April 2022 with an agenda that included her removal as a director and the appointment of Tom Lambert in her place. She maintains that she was not served with the notice of the meeting and was therefore denied an opportunity to attend and make representations before the purported resolution removing her was passed. 14. The Petitioner also complains that she was not involved in the Company's decision-making thereafter and was not invited to its Annual General Meetings. She states that these actions amounted to an attempt to erase her presence from the Company's affairs despite her continued status as a shareholder. 15. The Petitioner states that she attempted to resolve the dispute by offering to sell her 33.33% shareholding to the Respondent. She subsequently offered to purchase the Respondent's majority shareholding. According to her, neither proposal resulted in a satisfactory resolution. 16. She further states that she formally raised her concerns with the Respondent by letter dated 27 April 2023 but that the alleged oppressive conduct continued. 17. The Petitioner refers to the earlier proceedings in Mombasa High Court Commercial Miscellaneous Application No. E010 of 2023, Petra Lettau V Yves Berten & Others. In those proceedings, the Court directed the parties to proceed to arbitration under Clause 33 of the

Company's Articles of Association. Among the orders made were orders restraining dealings with the Company's shares and assets, protecting the Petitioner's position as a director, and requiring the production of specified Company records. 18. The Petitioner further states that difficulties arose concerning the appointment and constitution of the arbitral tribunal. Parties consequently entered into a consent terminating the arbitral proceedings, permitting each party to pursue civil remedies in Court, while certain interim orders previously issued remained in force for a further period. 19. The Petitioner further avers that, on 30 August 2024, the Respondent offered to purchase her 33.33% shareholding for Euros 100,000, with Euros 20,000 payable upon transfer and the balance of Euros 80,000 by monthly instalments of Euros 1,000. She considered the offer unacceptable and proposed that the Company and her shareholding be independently valued by an agreed valuer. 20. It is the Petitioner's contention that the cumulative effect of the Respondent's conduct amounts to oppression and unfair prejudice. On that basis, she asks the Court to liquidate Paradiso Toys Limited under section 424(1)(g) of the Insolvency Act and to appoint a liquidator to oversee the winding up of its affairs. 21. In the alternative, the Petitioner asks the Court to direct that the value of her shares be determined by an auditor or other appropriate professional appointed by agreement of the parties or by the Court, and that either party be permitted to purchase the other's shares on the basis of the resulting valuation. 22. In her further affidavit dated 11 May 2026, the Petitioner disputes the Respondent's account of the Company's finances and provision of records, and maintains that she made repeated attempts to exit through the sale of her shares. She further alleges that the Respondent has since ceased operating the hotel and converted the premises to his private residence. She therefore rejects the characterisation of the dispute as purely personal and maintains that the breakdown of the relationship directly affected her rights and interests as a shareholder.

C. THE RESPONDENT'S CASE 23. The Respondent opposes the Petition. His case is set out in the Replying Affidavit sworn on 13th April 2026. 24. The Respondent describes the Petition as malicious, misconceived and an abuse of the Court process. His position is that the Petition does not arise from any genuine oppression in the conduct of the Company's affairs but from the breakdown of the former romantic relationship between the parties. 25. The Respondent refutes the allegation that Company revenues have been concealed or diverted through foreign accounts. He states that the Petitioner has not identified any specific account or produced financial evidence demonstrating that Company funds were diverted or that revenues were excluded from the Company's accounts. 26. He further points to the records previously supplied to the Petitioner, including the Company's incorporation documents, register of members, CR-12, annual returns, financial statements for 2021 to 2023, KRA PIN certificate and title documentation. 27. The Respondent also disputes the Petitioner's assertion that she worked for the Company without remuneration. He states that she was never an employee of the Company and that there was no contract, resolution or other Company record creating an entitlement to remuneration. He maintains that the Petitioner's residence at the Company's premises was a consequence of the parties' personal relationship and was not employment-related. 28. With respect to the events following the breakdown of the relationship, the Respondent states that the Petitioner voluntarily

disengaged from the Company's affairs. He denies ejecting her from the Company premises or subjecting her to humiliating living conditions. 29. The Respondent similarly denies withdrawing Company funds for the purpose of making the Petitioner impecunious. He distinguishes between Company accounts and the parties' personal joint accounts and maintains that the cessation of the Petitioner's access to the latter was simply a consequence of the end of their personal relationship. 30. On the issue of the Petitioner's removal as a director, the Respondent avers that the Petitioner had already disengaged from the Company and had made repeated requests that he purchases her shares. He maintains that an Extra-Ordinary General Meeting was subsequently convened on 25 April 2022 and that the Petitioner was given notice of the meeting dated 19 March 2022, more than thirty days before the meeting. A resolution was thereafter passed removing her as a director and appointing Tom Lambert in her place. 31. The Respondent further relies on Clause 9 of the Company's Articles of Association concerning the transfer of shares. According to him, the Petitioner did not comply with that procedure. He maintains that her offers were addressed to him personally rather than to the Company as contemplated by the Articles. 32. On the previous arbitration proceedings, the Respondent admits that the Court directed the parties to conduct arbitration. He maintains, however, that the arbitral proceedings were terminated at the Petitioner's instance when the parties entered into the consent dated 15 July 2025. 33. The Respondent's broader position is that liquidation is an exceptional and drastic remedy which ought not to be employed merely because shareholders have fallen out. He maintains that the Company is solvent, operational and continues to conduct business, with employees, clients and ongoing obligations. 34. He avers that the Petitioner's interests can be addressed through less drastic means, including the share transfer mechanism contained in Clause 9 of the Articles, an independent valuation of the shares and, where appropriate, a structured buy-out. 35. With respect to dividends, the Respondent denies that the absence of dividend payments demonstrates oppression. He states that dividends may only be declared where the Company has distributable profits and that the Company's financial circumstances did not support dividend payments. 36. In the Respondent's view, the Petitioner's complaints amount principally to dissatisfaction with the manner in which the parties' personal relationship ended and her subsequent inability to secure the buy-out she desired. He maintains that these grievances do not establish grounds for liquidation under section 424(1)(g) of the Insolvency Act. The Respondent consequently asks the Court to dismiss the Petition with costs. D.

SUBMISSIONS

37. Vide the Petitioner's written submissions dated 11 May 2026, the Petitioner urges the Court to find that the affairs of Paradiso Toys Limited (the Company) have been conducted in an oppressive manner and that, in the circumstances, it was just and equitable to liquidate the Company under sections 424(1)(g) and 427 of the Insolvency Act, 2015. 38. In support of her case, the Petitioner relies principally on *Jitendra Brahmhatt v Dynamics Engineering* [1986] KECA 83 (KLR) on the meaning of the "just and equitable" ground. Mr. Wandabwa,

who orally submitted on behalf of the Petitioner, urged the Court to consider that equitable considerations may arise in a company founded upon a personal relationship involving mutual confidence, an understanding that shareholders would participate in management, and restrictions on the transfer of shares which make it difficult for a shareholder to exit upon the breakdown of the relationship. In *Jitendra Brahmbhatt*, the Court stated: In such cases it was most inappropriate to refuse a winding up order, particularly in limine, for the basic reason, if no other, that, once the relationship had irretrievably broken down, it was obvious that it should be brought to an end and that each party should not be prevented from obtaining his fair share of the assets of the business. 39. The Petitioner also relies on case law which recognized circumstances that may justify liquidation on the just and equitable ground, including disappearance of the substratum, deadlock arising from internal disputes and withholding of information from shareholders in circumstances suggesting an attempt to acquire their shares at an undervalue. She cited *Credit Reference Bureau (Holdings) Limited v Credit I1. 9 Information Systems Company Limited* [2026] KEHC 4121 (KLR), where the Court stated:

20. Where a company's substratum has disappeared, meaning it can no longer carry out the objects for which it was formed, the Court agrees with the Petitioner's submissions that "it is just and equitable" for the Court to intervene...
21. In *Ebrahimi v Westbourne Galleries Ltd* [1973] AC 360, the House of Lords held that the Court may order the winding up of a company where the circumstances demonstrate that the company can no longer operate in accordance with the expectations of its members... 40. Further relying on *Nairobi Winding Up Cause No.18 of 2009: In the Matter of Kangwana Investments Company Limited*, the Petitioner argues that exclusion of a shareholder from the affairs of a closely held company, coupled with the absence of meetings and financial accountability, may make it just and equitable to wind up the company. She submits that the same considerations arise here, as she has effectively been shut out of a Company in which she retains a 33.33% interest and is unable to ascertain or participate in its affairs. In that case it was stated: It is not in dispute that the Petitioner and the 1st Respondent are the only two directors of the Company. As things stand now, they cannot transact the business of the Company on account of a deadlock resulting from the dissolution of their marriage. The bitterness between the two parties is evidenced in the dispositions in support and in opposition to the Petition. There is equally no dispute that the Petitioner has been excluded from the affairs of the company; that no audited accounts have been prepared since 2008; that the company is run contrary to the law and that there has been no Annual General Meeting. Given that no AGM has been held for a number of years, it is manifest that the Company's accounts have not been presented to shareholders for a number of years. The financial probity of the Company cannot therefore be ascertained. As such I find merit in the Petitioner's submission that the shareholders have been kept in the dark about the company's affairs, and that it would be just and equitable to wind up the Company. 41. The Petitioner maintains that the existence of personal animosity did not, by itself, render the Petition an abuse of process. 42. Ultimately, the Petitioner submits that the cumulative effect

of her exclusion from management, alleged irregular removal as director, withholding of Company records, failure to hold meetings, alleged financial exclusion, breakdown of trust and communication, inability to secure a fair exit and the alleged cessation of the Company's business established a case for liquidation on the just and equitable ground. 43. In the alternative, the Petitioner seeks a fair and independent valuation of the shares, relying on *Siro Brugnoli & Another v Giancarlo Camerucci & Another* [2016] eKLR on expert valuation in a buy-out. 44. The Respondent, on the other hand, opposes the Petition and urges the Court to dismiss it. His position is that the dispute is fundamentally rooted in the breakdown of the parties' former romantic relationship and that the Petitioner had voluntarily disengaged from the Company thereafter. Mr. Sitonik, appearing for the Respondent, argued that this is a classic case of a Petitioner who has filed the Petition with a sole purpose of armtwisting the Respondent to purchase her shares. He argued that the Petition is an afterthought following the Petitioner's unsuccessful attempts to compel him to purchase her shares. 45. The Respondent identifies three principal issues: whether the Petitioner's removal as director was unlawful; whether she had established oppression as a minority shareholder; and whether the reliefs sought, particularly liquidation and winding up, could properly be granted. 46. The Respondent's written submissions substantially reiterate the position set out in his Replying Affidavit, particularly his denial of the allegations of oppression and unlawful conduct. He relies on *Kamau v Kenya Fire Appliances* [2023] KEHC 19578 (KLR) on the issue of oppression of shareholders and for the proposition that failure to hold meetings, without evidence that the shareholder had exercised the statutory mechanisms available to her, did not by itself establish oppression. 47. On liquidation, the Respondent submits that winding up is a drastic remedy and that the Court is required to consider whether other remedies were available. He relies on section 427 of the Insolvency Act and submits that liquidation should not be ordered where an alternative remedy exists and the Petitioner would be acting unreasonably in preferring liquidation. 48. The Respondent further relies on *In the Matter of Al Marshidy Enterprises Limited*, Insolvency Cause No. 1 of 2018 for the proposition that the Court may, instead of liquidating a company, grant alternative relief under section 782 of the Companies Act, including regulating the conduct of the Company's affairs, requiring particular acts to be undertaken or providing for the purchase of a member's shares. 49. The Respondent consequently urges the Court to find that the Petitioner has failed to establish unlawful removal, oppression, deadlock or any other circumstance warranting liquidation. His position is that the Petition principally seeks to force him to purchase the Petitioner's shares following the breakdown of their personal relationship and that the Court should, in any event, prefer the less drastic remedies available under the Companies Act and the Articles of Association. E. ANALYSIS AND DETERMINATION 50. I have considered the instant petition, the affidavits filed by the parties, their respective submissions and the authorities cited, I consider that the dispute principally turns on the question whether the Petitioner has demonstrated sufficient grounds for the grant of a liquidation order pursuant to section 424(1)(g) of the Insolvency Act. 51. Section 424(1)(g) of the Insolvency Act, 2015, permits the Court to liquidate a company where it is of the opinion that it is just and equitable to do so. It

provides that- A company may be liquidated by the Court if-

- g. the Court is of the opinion that it is just and equitable that the company should be liquidated. 52. The existence of grounds to satisfy the court that it is just and equitable to issue an order of liquidation do not require a particular set of factual events to first occur. Each case will be evaluated on its own unique circumstances. Furthermore, the court is minded to consider if a less drastic alternative exists to liquidation even where it is satisfied that it is just and equitable to order liquidation. 53. In *Re Garnets Mining Co Ltd* [1978] KEHC 8 (KLR), the Learned judge stated as follows on exercise of this discretion: So a summary of the way to approach the issue of whether or no to wind up a company under the just and equitable rule is this. It is a matter for the discretion of the court. The discretion is a very wide one. It will be a matter of fact whether the company should be wound up or not under this rule. Each case will depend on its own circumstances... The discretion is a judicial one, so it must be judicially exercised; Lord Clyde in *Baird v Lees* 1924 SC 83, 90, said a nod to God and a good conscience would not be enough for this and grounds must be given which can be examined and justified. Lord Diplock has had the latest word on "judicial discretion": he said in *Cookson v Knowles* [1978] 2 WLR 978,981: ... like all discretions vested in judges by statute or at common law, it must be exercised judicially or, in the Scots phrase used by Lord Emslie in *Smith v Middleton* 1972 SC 30, in a selective and discriminating manner, not arbitrarily or idiosyncratically – for otherwise the rights of parties to litigation would become dependent on judicial whim. 54. The present dispute equally calls for the application of the principle with some care. A dispassionate assessment of the facts as deponed in the affidavits by both parties will be weighed against the legal principle accordingly. 55. There is no dispute that the parties herein were romantically involved in the course of their business venture. Their personal and corporate lives were, on the evidence before the Court, closely connected. Both incorporated Paradiso Toys Limited and were shareholders and directors. The Company's property housed the business through which they operated Zum Zum Beach House and also accommodated the residence which they shared. In other words, the line between their partnership and separate corporate dealings under the company was a thin one. 56. Although the Court must resist the temptation to resolve matters of a failed personal relationship through company law, it must equally resist the corresponding temptation of pretending that the personal relationship is irrelevant where the company was itself built upon it. Deep personal relationships – and sometimes friendships form the bedrock of corporate relationships. It is through these relationships that parties build trust and find a common vision to establish a business. Equally, because relationships and friendships can end, business built on their foundation are at the biggest risk of resulting in a deep legal quagmire when such relationships collapse. It is for that reason that such a collapse may invite a court to consider whether a just and equitable cause has been established for liquidation. 57. To this extent, the Court agrees with Mr. Wandabwa's argument that where a pre-existing relationship informs the running of the affairs of the company – where all the parties participate in the affairs and they are unable to agree, it may establish a basis for liquidation under the just and equitable principle. The

Court of Appeal in *Jitendra Brahmabhatt v Dynamics Engineering Ltd* [1986] KECA 83 (KLR) eloquently articulated the place of individuals in corporate settings and the principle of just and equitable as follows: The words “meaning just and equitable” are a recognition of the fact that a limited company is more than a mere legal entity, with a personality in law of its own: that there is room in company law for recognition of the fact that behind it, or amongst it, there are individuals, with rights, expectations and obligations inter se which are not necessarily submerged in the company structure.... The “just and equitable” provision does not, as the respondents suggest, entitle one party to disregard the obligation he assumes by entering a company, nor the court to dispense him from it. It does, as equity always does, enable the court to subject the exercise of legal rights to equitable considerations; considerations that is, of a personal character arising between one individual and another, which may make it unjust, or inequitable, to insist on legal rights, or to exercise them in a particular way.... It is these, and analogous, factors which may bring into play the just and equitable clause, and they do so directly, through the force of the words themselves. 58. The uncontested breakdown of the personal relationship between the parties in the instant case is, therefore, relevant in determining whether the Petitioner's alleged exclusion from management, the prolonged dispute over the Company and her inability to obtain an agreed exit have rendered continued insistence upon the existing corporate arrangement inequitable. 59. The Petitioner's case is that the main object of establishment of the company as captured under paragraph 3 (a)(i) of the memorandum and articles of association being, among other things, acquisition and carrying out of hotel business no longer exists as the premises have been converted into a personal residence. She avers that it is no longer possible to make joint decisions. On this background, the Petitioner admits that she has attempted, unsuccessfully, to offload her shares but such efforts have been rebuffed by the Respondent. She considers the Respondent's offer to purchase her shares at Euros 100,000 paid in 7 years to be unreasonable. The Petitioner hence contends that she has tried every remedy under the Companies Act without success. It is also her case that the notice which purportedly called for a meeting for her removal on as a director 25 April 2022 was not served on her. 60. On the other hand, the Respondent contends that these proceedings are meant to arm-twist him to purchase her shares under her terms. He contends that claims of oppression have not been proved to the required standard. He further avers that there is no evidence that the company has collapsed as alleged. On the contrary, the Respondent asserts that it is the Petitioner who abandoned the company when the relationship ended necessitating the meeting for her removal as a director. 61. It is evident that upon the end of the relationship between the Petitioner and the Respondent the two parties have not conducted the business of the company as one. There is also no contestation that the Petitioner has been excluded from the company although the parties do not agree on whether the correct procedure was followed for her removal as a director. This is a matter that would require interrogation of evidence beyond the scope of these proceedings. 62. This court does not as well find evidence that the substratum of the company has ceased to exist as alleged. In examining the Petitioner's arguments against this backdrop, even if the hotel has ceased operating in the manner in which it previously did,

that fact alone does not establish that the Company's substratum has disappeared. The Petitioner's case raises questions concerning the manner in which the Company's property is presently being used and if it is in line with the interests of all shareholders, which matters may be relevant to unfair prejudice, but they do not establish that the Company's substratum has disappeared. There is no evidence that the company is unable to pay its dues or that it is not operating at all. 63. On whether the Petitioner has demonstrated unfair prejudice, I am guided by Part XXIX of the Companies Act, 2015 and particularly section 780, which provides for the protection of members against oppressive conduct and unfair prejudice and equally outlining the manner in which the affairs of the company are conducted, or an act or omission of the company, and the effect of that conduct upon the applicant's interest as a member. The Court of Appeal in *S.K. Macharia & another v Samuel Njoroge Muchiri & 2 others* [2007] KECA 165 (KLR) described oppressive conduct as one which is "burdensome, harsh and wrongful." 64. The Petitioner maintains that there has been a prolonged dispute concerning her access to the Company's financial information, notwithstanding previous court intervention; that the parties have been unable to agree upon a means by which she may realise the value of her interest; and that she therefore remains financially interested in the Company while substantially removed from its affairs. 65. While the evidence presented before this Court does not outrightly classify the Respondent's actions as "burdensome, harsh and wrongful", to meet the criteria of oppression, I do find that the manner in which the affairs of this closely held Company have evolved following the breakdown between the parties has become unfairly prejudicial to the Petitioner's interests as a member. It is evident that there is a complete breakdown of mutual trust between the shareholders and there is no likelihood of the two parties transacting the business of the company in a mutually beneficial way. It is also clear that attempts at legal resolution of the issues between the parties have been unsuccessful as the court cases filed or the arbitration commenced was not concluded. The evidence presented establishes a relationship that has irretrievably broken down and sufficient corporate consequences to warrant the Court's intervention. In reaching this conclusion, the Court has considered the evidence as a whole, the remedies that have been attempted by the Petitioner and the period that has lapsed since the breakdown of the relationship. It is evident that the situation between the parties concerning the corporate affairs of the company will not change for the better. Equally, one party is at a disadvantage in this relationship and that is the Petitioner. 66. It is up to this Court to determine if its intervention should go so far as liquidation, or if the Court should consider whether another remedy will suffice. The starting point is an acknowledgment that whereas this Court has formed an opinion that it is just and equitable for the company to be liquidated, the order of liquidation is discretionary and the court must be satisfied that there is no viable alternative before issuing such an order. *Rutto J in Change v Gethenji* [2026] KEHC 12792 (KLR) opined as follows:

38. The Court accepts that in appropriate circumstances a company resembling a quasi-partnership may be liquidated where there is a complete breakdown of mutual trust and confidence between the participants. However, the mere existence of disagreements between shareholders or directors does not automatically justify liquidation. 67. Section 427 of the Insolvency Act sets out the powers of a court upon hearing an application for liquidation as follows:
- (1) the hearing of a liquidation application, the Court may make such of the following orders as it considers appropriate— (a)an order dismissing the application; (b)an order adjourning the hearing, conditionally or unconditionally;
 - (c) an interim liquidation order; or (d) any other order that, in its opinion, the circumstances of the case require. 68. Equally, section 782(1) of the Companies Act, 2015, permits the Court to make such orders as it considers appropriate to give relief in respect of the matters complained of, while section 782(2) then identifies particular remedies, as highlighted below: (1)If, on the hearing of an application made in relation to a company under section 780 or 781, the Court finds the grounds on which the application is made to be substantiated, it may make such orders in respect of the company as it considers appropriate for giving relief in respect of the matters complained of. (2)In making such an order, the Court may do all or any of the following: (a)regulate the conduct of the affairs of the company in the future; (b)require the company— (i)to refrain from doing or continuing an act complained of; or (ii)to do an act that the applicant has complained it has omitted to do; (c)authorise civil proceedings to be brought in the name and on behalf of the company by such person or persons and on such terms as the Court directs; (d)require the company not to make any, or any specified, alterations in its articles without the leave of the Court; (e) provide for the purchase of the shares of any members of the company by other members or by the company itself and, in the case of a purchase by the company itself, the reduction of the company's capital accordingly. 69. In *Siro Brugnoli & another v Giancarlo Camerucci & another* [2016] KEHC 2625 (KLR), the court had this to say: It is my considered finding from the evidence availed herein that the relationship between the petitioners and the Respondents is so strained that it is impossible for them to carry on company business together. The deadlock can only be unlocked by disengaging the two opposing sides. There have also been previous cases that have been filed between the parties that have stagnated the operations of the companies. However, the stalemate alone is not enough to warrant the winding up of a Company, if, as submitted by Counsel for the Respondents, there is an alternative remedy. 70. Furthermore *Siro Brugnoli* (supra) relied on the case of *O'NEIL & ANOTHER vs. PHILLIPS*, [1999] 1 WLR 1092 where Lord Hoffman set out what would amount to a reasonable offer of an alternative remedy as follows:
- a. The offer must be to purchase the shares at a fair value;
 - b. If not agreed the value must be determined by a competent expert;
 - c. The offer should include to have the value of the shares determined by an expert;

- d. The offer should provide for the equality of arms between the parties; Both should have the same right of access to information about the company which bears upon the value of the shares. 71. It is my considered view that the circumstances of this case call for an alternative remedy. The just and equitable jurisdiction is intended to achieve justice between those interested in the company. It would be contradictory to exercise that jurisdiction in a manner more destructive than the circumstances would require. 72. Having considered the circumstances as a whole, I am satisfied that the breakdown of the relationship between the parties has extended beyond their personal differences and affected the manner in which the affairs of the Company are conducted. However, I decline to make an order for the liquidation of Paradiso Toys Limited as there is an adequate alternative remedy available under section 782 of the Companies Act, read together with section 427 of the Insolvency Act, which is also a remedy expressly sought by the Petitioner in the alternative. 73. Accordingly, I make the following orders: a. The prayer for liquidation of Paradiso Toys Limited under section 424(1)(g) of the Insolvency Act is declined. b. In lieu of liquidation, and pursuant to section 782 of the Companies Act and section 427 of the Insolvency Act, the parties shall proceed to conduct an independent valuation and buy-out of their respective interests in the Company. c. The fair value of the Company and of the parties' respective shareholdings shall be determined by an independent firm of Certified Public Accountants agreed upon by the parties within thirty (30) days from the date of this Judgment. d. In default of agreement within that period, the firm shall, upon application by either party, be nominated by the Chief Executive Officer of the Institute of Certified Public Accountants of Kenya (ICPAK). e. The valuation shall be completed within sixty (60) days of the appointment of the firm, or within such further period as the Court may, for sufficient reason, allow. f. Upon completion of the valuation, the Respondent shall have the right of first refusal to purchase the Petitioner's 33.33%. g. Should the Respondent decline or fail to exercise that option within a period of fourteen (14) days, the Petitioner shall have the option to purchase the Respondent's 66.66% shareholding at the corresponding value determined by the same valuation, which option shall similarly be exercised within fourteen (14) days. h. The purchase price shall be paid within sixty (60) days of the exercise of the relevant option, unless the parties agree otherwise in writing. Transfer of the shares shall take place simultaneously with payment of the purchase price. i. The costs of the independent valuation of the Company and its properties shall be borne by the Company. j. Each party shall bear his or her own costs of the Petition. 74. Orders accordingly. DATED AND DELIVERED THIS 21ST DAY OF SEPTEMBER 2026 NABIL M. ORINA, Ph.D JUDGE IN THE PRESENCE OF: Ms. Mercy Munyao holding brief for Mr. Wandabwa for the Petitioner Mr. Sitonik for the Respondent Ms. Linda Nyawira – Court Assistant

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Prepared on 28 October 2026 · Esheria