

SAFEGUARDING ASSETS, ENFORCING RIGHTS: COMBATING FRAUDULENT TRANSFERS UNDER KENYAN LAW

A Guide for Creditors, Shareholders, and Investors—Locally and Across Borders

EXECUTIVE SUMMARY

Fraudulent transfers and asset manipulation are some of the most pervasive strategies used by debtors and rogue directors to defeat legitimate claims by creditors and shareholders. Whether it is land secretly transferred to insiders, shares fraudulently allotted, or company assets sold for a pittance, such misconduct erodes commercial integrity and investor confidence.

Fortunately, Kenyan law offers robust protections under the Insolvency Act, Land Registration Act, and Companies Act, with remedies that can unwind such transactions, restore ownership, penalize wrongdoers and offer the affected parties, including creditors, reprieve. Backed by deep statutory knowledge, real-time litigation support, and regional reach, CM Advocates LLP is equipped to act fast and strategically to preserve your interests.

1. UNDERSTANDING FRAUDULENT TRANSFERS UNDER KENYAN LAW

Fraudulent transfers in this article refer to the deliberate movement of assets to defeat creditor claims or shareholder rights, as the case may be. They typically involve:

- Undervalued or sham transactions;
- Transfers to insiders or shell entities;
- Forged share transfers or registry manipulation; and
- Asset dissipation during insolvency proceedings

Fraudulent transfers, whether deliberate or disguised, typically occur in two forms. The first is actual fraud, where there is a demonstrable intention to hinder, delay, or defraud creditors. The second is constructive fraud, which arises where the debtor, already insolvent or rendered insolvent by the transaction, transfers assets without receiving fair value in return.

2. LEGAL RECOURSE UNDER THE INSOLVENCY ACT, 2015

The **Insolvency Act, 2015**, provides mechanisms to address fraudulent transfers and preferences made by companies facing insolvency. **Sections 682** to **685** of the **Insolvency Act** empower the courts to make a wide range of orders to unwind transactions at an undervalue or preferences given within specific "relevant times", including;

- Setting aside undervalued or preferential transfers;
- Ordering restitution or compensation from recipients;
- Reversing transactions with related parties;
- Protecting innocent third parties who acted in good faith, unless they were connected with the company or had notice of the insolvency proceedings

This ensures that some creditors having equal rights are not treated preferentially to others and that transactions designed to defeat legitimate claims can be reversed, even where third-party involvement exists.

Transactions at an Undervalue

Section 682 of the Insolvency Act grants the court the power to set aside transactions entered into by a company during the relevant time as defined under Section 684 for no or inadequate consideration and restore parties to the position they would have been in had the transaction not occurred.

Preferences

Preferential treatment occurs where a company favors one creditor over others, effectively placing them in a better position than other creditors than they would have been in if the company were to be placed under liquidation.

Section 683 of the **Insolvency Act** empowers the Court to void preferential treatments given by the company to certain creditors during the relevant time as defined under the foresaid section 684, and restore the position that would have existed if the preference had not been given. This is possible even where an action was taken due to a court order.

It is important to note that preferential treatment is presumed where a person connected to the company is involved. This presumption is meant to discourage insider dealings that disadvantage other creditors.

In ***Re Malde Holdings Limited [2024] KEHC 1011 (KLR)***, the High Court applied **Sections 683**, **684**, and **685** of the **Insolvency Act** to set aside transactions deemed to be fraudulent preferences. The administrator challenged various assignments of rental income and debts made by the company's directors to themselves and connected third parties while an administration application was pending. These transactions were found to have been made within two years prior to the onset of insolvency and therefore constituted preferences under **section 683** as they placed certain unsecured directors and insiders in a better position than other creditors. The Court held that the assignments were done in bad faith to defeat the interests of other creditors and fell squarely within the scope of fraudulent preference. Relying on **section 685**, the Court exercised its power to nullify the transactions, restore the company's financial position, and affirmed that such orders can extend to third parties.

3. FRAUDULENT LAND TRANSFERS – LAND REGISTRATION ACT, 2012

Section 52 of the **Land Registration Act** empowers creditors to apply to court for an order setting aside dispositions of land intended to prejudice creditors. Upon hearing the application, and being satisfied that an applicant has been prejudiced by the disposition the court may make various orders including: compensation of the Applicant or restoration of the land to the debtor to be held for the benefit of the creditors.

The Act at Section 53 however, qualifies this and attempts to extend protection to the person receiving the land. In this regard, it provides that the court shall not make an order against that person if it is proved that the land was acquired or received in good faith and without knowledge of the fact that it has been the subject of a prejudicial disposition.

Knowledge is then defined to include actual, constructive and imputed knowledge.

4. SHARE MANIPULATION & GOVERNANCE FRAUD – COMPANIES ACT, 2015

Fraudulent transfer of shares often leads to the denial of shareholders' rights under the Companies Act, 2015, such as voting and other decision-making rights. Once shareholders lose their shareholding rights, they are unable to enjoy such rights.

Fraudulent transfer of shares may involve the following:

- Forged or backdated transfer forms presented as valid instruments of transfer;
- Abuse of authority by directors to allocate or reallocate shares; or
- Shareholder misrepresentation or identity theft and registry suppression.

For the court to allow a claim of fraudulent transfer of shares, it must be specifically pleaded and strictly proved. Mere suspicion is not sufficient for the Court. This was affirmed by the Court of Appeal in ***Gladys Wanjiru Ngacha v Teresa Chepsaat & 4 others [2013] eKLR***.

Key Provisions under the Companies Act, 2015

- **Sections 497 to 503 of the Act** govern the lawful transfer of shares. **Section 497** specifically provides for the registration of share transfers and the requirement for proper documentation and procedures. It also recognises transfers by operation of law.
- **Sections 103** and **862 of the Act** enable rectification of the member registers/ entries relating to a company in case of factually inaccurate entries or forgeries.
- **Sections 238 to 242 of the Act** empower minority shareholders to institute derivative suits for actions arising from or proposed actions or omissions involving fraudulent transfer of shares and governance frauds.

Derivative Suits

For suits to be admitted as derivative suits in Kenya, the following must be satisfied:

a) The plaintiff must be a member of the company (whether current, former or a beneficial shareholder) – Locus standi;
b) The suit should be in the interest of the company. To this end, the reliefs sought should be consistent with the objectives of the company and are for the good of the company at large;
c) The party seeking to commence the suit should FIRST seek leave of the court to commence the derivative suit on behalf of the company. See ***Amin Akberali Manji & 2 Others V Altaf Abdulrasul Dadani, [2015] eKLR***; and
d) Establishment of a prima facie case – there must be clear misconduct by the directors or other person causing the demonstrable harm to the company.

Remedies available in Derivative Suits

Some of the remedies, statute-based, equitable or common law principles include:

a. **Injunctions** – aggrieved shareholders may obtain interlocutory or permanent injunctions to prevent further dealings in the shares or to halt any meetings or resolutions based on fraudulent ownership. See the cases of ***Nganga v Adaki & 5 others (Commercial Case E002 of 2023) [2023] eKLR***, and ***Sciommeri v Tasmac Limited & 4 others (Civil Suit E006 of 2023) [2024] eKLR***.
b. **Rectification of register of members** – The Court will invoke the provisions of Sections 103 and 862 of the Companies Act. In such cases requiring rectification of the register, the aggrieved party should join the Registrar of Companies as a party to the suit.
c. **Damages** – the aggrieved party must specifically prove this prayer for the Court to award the damages. The Court may also order the company to pay compensation or damages equivalent to the current value of the fraudulently acquired shares.
d. **Director liability** – the Court may find the individual directors liable for the illegal transfer of shares. The directors may be found criminally liable for fraud, if sufficient evidence is produced.

Company shareholders are therefore urged to conduct CR12 searches regularly to monitor changes in ownership.

Preventive & Strategic Measures

To safeguard your position:

- Immediately conduct the relevant searches; **CR12** and **land searches**;
- Preserve all evidence (share certificates, emails, allotment letters, resolutions);
- Engage counsel to obtain urgent injunctive relief (if fraudulent transfers are noted);
- File statutory complaints with the **Registrar of Companies** or **Land Registrar**;
- Maintain a strong paper trail to support your claim in court.

HOW CM ADVOCATES LLP CAN HELP

At CM Advocates LLP, we provide end-to-end solutions for asset protection, debt enforcement, and shareholder redress, with legal precision and regional scale.

We operate across key African jurisdictions including Kenya, Uganda, Rwanda, Tanzania, Zambia, South Sudan, Ethiopia, and Nigeria. Our wide geographic footprint enables us to offer seamless legal solutions to both local and international clients navigating cross-border matters.

Our Core Capabilities

1. ***Litigation & Enforcement***
   - Set aside fraudulent transfers under insolvency and company law;
   - Reverse preferences and insider dealings;
   - Rectify manipulated share registers;
   - Freeze assets via injunctions, Mareva orders, and statutory notices.

2. ***Asset Recovery & Investigations***
   - Trace concealed or dissipated assets locally and across borders;
   - Work with certified investigators to identify hidden property;
   - Coordinate asset seizures and auctions via court orders.

3. ***Protection for Foreign Creditors & Investors***
   - Enforce foreign judgments and arbitral awards under the New York Convention;
   - Provide litigation and corporate governance support to international shareholders;
   - Navigate cross-border insolvency and asset recovery issues.

4. ***Corporate Restructuring and Insolvency Advisory***
   - Guide creditors through:
     - Winding up proceedings,
     - Voluntary arrangements,
     - Debt-for-equity swaps,
     - Administration;
   - Assist distressed businesses in reorganising or refinancing to avoid liquidation.

TAKE ACTION BEFORE THE DAMAGE BECOMES IRREVERSIBLE

Fraudulent transfers move fast. You must move faster. Whether you're a creditor, shareholder, or foreign investor—CM Advocates LLP stands ready to secure your interests with tactical speed and legal depth.

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