

COMPANIES ACT, 2015 · SECTIONS 780 TO 784 · UNFAIR PREJUDICE PROCEEDINGS

Kenya Unfair Prejudice Practice Bible

A practice Bible under sections 780 to 784 of the Companies Act, 2015. Shareholder conflict, board deadlock, evidence, procedure and remedies.



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Purpose and how to use this Bible

This manual is a working litigation guide for identifying, investigating and presenting a member's unfair-prejudice claim under section 780, and for framing appropriate relief under section 782. It maps common conflict patterns, including deadlock, exclusion, diversion of value, financial abuse, fraud allegations, information obstruction and constitutional manipulation. It is designed to help counsel move from a client's grievance to a provable statutory case and a workable order.

The governing question is not simply whether the parties are in conflict or whether a decision was commercially unwise. The applicant must connect identifiable conduct in the company's affairs, or an actual or proposed company act or omission, to prejudice to a member's interests and show why the prejudice is unfair in the commercial and constitutional context. The evidence and remedy must be built around that connection.

The Act text and authorities were checked against materials available on 8 October 2026. Before filing, verify the latest consolidated legislation, amendments, procedural directions, the company's filed constitution and the current status of every cited decision. Authorities below are a research map, not a substitute for reading the complete judgment and matching its ratio to the facts.

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01 Statutory architecture and threshold

1.1 Section 780: who may apply and on what grounds

Section 780(1) permits a member to apply to the Court for an order under section 782 on either of two grounds: (a) the company's affairs are being or have been conducted oppressively or in a manner unfairly prejudicial to the interests of members generally or a section of members, including the applicant; or (b) an actual or proposed act or omission of the company, including an act or omission on its behalf, is or would be oppressive or so prejudicial. The second limb is important where a threatened transaction or imminent exclusion has not yet been completed.

Section 780(2) extends "member" for this purpose to a person who is not yet entered as a member but to whom shares have been transferred or transmitted by operation of law. Confirm the register, transfer instruments, succession documents and any pending rectification issue at the outset. Do not assume that a person with an economic interest, employment role, founder status or beneficial claim automatically has standing as a member.

1.2 Section 781: Attorney-General route

Section 781 is a distinct route for the Attorney-General, not the ordinary shareholder petition. It applies where the statutory investigative or regulatory predicates exist: an inspector's report under Part XXX; specified Attorney-General powers under sections 1000 or 1001; specified Capital Markets Authority information-gathering or inquiry activity; or a report from an authorised CMA inquiry. If satisfied that oppressive or unfairly prejudicial conduct exists, the Attorney-General may apply under section 782, in addition to or instead of seeking liquidation. A private member should not plead section 781 as if it creates a parallel personal standing route.

1.3 Section 782: broad and tailored relief

If the grounds are substantiated, section 782(1) permits such orders in respect of the company as the Court considers appropriate to give relief for the matters complained of. The listed powers include: regulating future conduct; requiring the company to stop an act or perform an omitted act; authorising civil proceedings in the company's name and on its behalf; restricting constitutional alterations without leave; and ordering purchase of a member's shares by other members or by the company, with a capital reduction in the latter case. Subsection (3) says the list does not limit the broad power in subsection (1). The company is entitled to service and to appear and be heard under subsection (4).

A petition may therefore seek one or a combination of governance, corrective, protective, derivative and exit relief. The order should cure the proven unfairness while remaining workable, proportionate and enforceable. The court is not a general business manager and will be cautious about supervising a dysfunctional company indefinitely.

1.4 Sections 783 and 784: registration and constitutional follow-through

Where an order under section 782 alters the company constitution or authorises/directs specified amendments, section 783 requires the company to lodge a copy of the order for registration within 14 days, unless the Court extends the period. Failure attracts the stated offence and fines for the company and defaulting officers, with daily further offences after conviction if the default continues. Section 784 requires the amended articles or relevant resolution/agreement to accompany the registered order, and requires copies of articles issued after the order to include the order unless its effect has been incorporated into the articles. It also creates offences and daily penalties for continuing default after conviction.

Draft the order to state who must make each filing, the deadline, the documents to be lodged, who bears the costs, and whether the Registrar is to be served. Where the company is controlled by the alleged wrongdoers, make the order self-executing as far as the statute permits: include liberty to apply, directions for delivery of signed documents, and a clear mechanism for default.

1.5 Textual cross-reference caution

Some published headings/marginal captions for sections 780 and 781 refer to sections 796 or 783, while the operative text of section 780(1) and section 781(2) points to relief under section 782. Plead and analyse the operative subsections in context, verify the exact current gazetted/consolidated text, and avoid allowing a stale marginal caption to distort the statutory route.

02 The analytical test

2.1 Convert the grievance into a statutory case

ELEMENT	QUESTION TO ANSWER	WHAT PROVES IT
Standing	Is the applicant a member, or within s.780(2)?	Current register; share certificate; transfer/transmission documents; BRS filings.
Company conduct	What course of conduct, actual/proposed act or omission is attributable to the company or done on its behalf?	Board and member minutes; notices; bank records; contracts; accounts; witness evidence.
Member interest	How is the applicant affected in the capacity of member?	Voting, participation, information, dividend, capital, dilution, value, agreed management role.
Prejudice	What harm, risk, exclusion or impairment has occurred or is imminent?	Quantified value loss; denied rights; diverted opportunity; impaired governance; irreversibility.
Unfairness	Why does the conduct depart from fair dealing in this relationship?	Articles, shareholders agreement, understandings, course of dealing, concealment, self-interest, procedural abuse.
Causation and remedy	How will the proposed order address this conduct and prejudice?	Transaction tracing, expert valuation, feasible governance/exit terms, draft order.

2.2 Prejudice and unfairness are related but separate

Prejudice is harm or impairment to the relevant member interest. It need not always be a proved immediate loss in share price: in a quasi-partnership setting, exclusion from management where participation was part of the bargain may itself matter. But the applicant still must articulate the affected member interest and support it with evidence. Unfairness asks whether the prejudice is wrongful in the context of the constitution, agreements, legitimate expectations, commercial dealing and the parties' conduct.

A technical breach of the articles may be insufficient if trivial and harmless. Conversely, formal compliance with the articles is not invariably decisive where the parties' relationship and legitimate expectations supply equitable context. The articles and shareholder agreement remain the starting point; equitable considerations do not create an unrestricted fairness jurisdiction.

2.3 Member qua member and company wrongs

The applicant must ordinarily show prejudice to interests as a member, not merely a personal employment, contractual, family or directorship grievance. Separate capacities carefully. A wrongful dismissal from employment may be an employment claim; unlawful removal as director may engage company-law procedures; those events may also evidence unfair prejudice if they defeat a genuine member-level expectation of management participation or are part of a pattern that strips the applicant's investment of value.

Where the primary injury is to the company—misappropriation, diversion of assets, breach of directors' duties—the company is ordinarily the proper claimant under the rule in *Foss v Harbottle*, subject to statutory exceptions and derivative proceedings. Under section 782(2)(c), the unfair-prejudice court may authorise civil proceedings in the company's name. Plead the member prejudice and company loss distinctly; seek derivative relief to recover value for the company rather than an unauthorised personal payment of corporate loss.

2.4 No automatic minority-only rule

Section 780 is not confined by its text to a minority applicant: it protects members generally or a section of members, including the applicant, and refers to prejudice to members generally as well. Equal shareholders can therefore apply where the facts meet the test. But equal ownership alone, a relationship breakdown or board stalemate does not itself prove unfair prejudice.

2.5 Cumulative patterns matter

Assess the course of conduct as a whole. A single meeting irregularity may be weak; repeated exclusion, deliberate information denial, selective remuneration, related-party transfers and an engineered dilution may collectively reveal unfair dealing. Build a dated chronology and identify the point where legitimate disagreement becomes unfair conduct.

03 Scenario catalogue

The scenarios below are issue-spotting patterns, not automatic causes of action. For each, prove the act or omission, the member interest affected, the prejudice, why the conduct is unfair, any lawful explanation, and the relief that would cure it. Include threatened conduct under section 780(1)(b) where the evidence shows a real and sufficiently concrete proposal.

A. Deadlock, governance and exclusion

Equal-shareholder or equal-board deadlock. Two 50/50 blocs cannot approve budgets, contracts, appointments or strategy; the company's business is paralysed, deteriorating or exposed to loss. Deadlock is context, not itself unfairness. Identify a party's abuse, strategic veto, refusal to follow agreed process, asset extraction, or impossibility of fair continuation. Consider a buyout, governance directions, mediation, or—if no workable alternative—winding up.

One bloc uses actual control despite nominal equality. A shareholder controls bank mandates, staff, records or voting proxies and implements decisions without valid approval. Show the practical control and concrete prejudicial acts; voting percentages alone may not show control.

Exclusion from management in a quasi-partnership. A founder or investor was admitted on a shared-management understanding and is abruptly shut out while others continue the business. Prove the understanding through negotiations, articles, shareholder agreement, repeated practice and role allocation. A bare title or hope of permanent directorship is not enough.

Board meetings withheld or manipulated. Notice is omitted/short, meetings are held at inaccessible times, quorum is engineered, agenda items concealed, minutes falsified, or votes are conducted to defeat a member-director's participation. Match each event to articles, statutory notice rules, quorum and prejudice.

Removal or suspension as director used as squeeze-out. A director is removed in accordance with the formal power but for the purpose of defeating an agreed member-management role, or in an irregular process. Distinguish the right to remove a director from member prejudice; establish quasi-partnership expectations, bad faith, retaliatory motive or connected value diversion.

Misuse of casting vote or veto. A chair or bloc uses a casting vote, reserved matter veto, or quorum rule selectively to impose private benefits or block ordinary company functions. Prove the governing rule, pattern, commercial effect and alternative available.

Failure to hold AGMs or provide voting opportunity. Repeatedly delayed or omitted meetings prevent the applicant from receiving accounts, voting, questioning directors or exercising rights. Show the statutory/constitutional duty, prior requests, length and consequences.

Capturing the board through new appointments. A majority appoints allies, relatives or nominees in breach of articles, shareholders agreement, agreed board balance or proper purpose, then uses the captured board to exclude or extract value.

B. Economic extraction and diversion

Excessive director remuneration, bonuses or benefits. Controlling members award themselves salaries, bonuses, vehicles, loans, rent or benefits disproportionate to services while declaring no dividends. Compare market benchmarks, historical practice, board approval, conflicts disclosures and distributable profits.

Dividend suppression or selective distribution. Profits are retained indefinitely without credible reinvestment rationale while controllers receive value through salaries, related-party fees or selective benefits; or a declared dividend is withheld from some members. There is no automatic right to a dividend absent declaration/entitlement. Demonstrate the extraction pattern, policy departure and differential impact.

Diversion of company contracts or opportunities. Business, clients, tenders, intellectual property, staff, data, premises or opportunities are transferred to a competing vehicle owned by controllers or relatives. Trace customer movement, bids, invoices, emails, asset use, non-compete/conflict duties and lost margin.

Related-party transactions on unfair terms. Company property is leased, sold, financed or serviced by a controller's affiliate at below/above market terms. Obtain beneficial ownership, approvals, valuation and transaction records; quantify value leakage.

Asset stripping, unauthorised disposal or encumbrance. Assets are sold, charged, transferred or depleted without authority or at undervalue, particularly during a dispute or before an exit. Secure title searches, valuation, bank documents, board approvals, consideration flow and urgent preservation evidence.

Corporate funds used personally. Company funds pay private expenses, family expenses, unrelated litigation, personal debts or unexplained cash withdrawals. Build a transaction schedule and distinguish suspicious entries from proven misappropriation.

Loans/guarantees to controllers or connected persons. Favourable, undocumented or unrepaid advances, guarantees or security expose the company and dilute value. Identify terms, authority, repayment, security, solvency and disclosure.

Preferential payments or selective creditor treatment. Insiders receive repayment, security or transfers while the company is distressed or a member group is excluded from the benefit. Consider insolvency avoidance and directors' duties in parallel.

C. Capital, ownership and voting rights

Dilution by new issue or conversion. Shares/options/convertible instruments are issued to controllers or associates at undervalue, without proper purpose, notice, pre-emption compliance or fair opportunity. Prove cap table before/after, valuation, funding need, decision process and control effect.

Issue of shares to entrench control. A technically authorised issue is used principally to dilute a dissenting member or neutralise voting rights. Test statutory and constitutional authority, directors' duties, pre-emption, proper purpose and whether the issue genuinely funded the business.

Refusal to register transfer or transmission. The company or controllers obstruct a transfer, succession transmission or buyout selectively, frustrating the applicant's rights or trapping them in the company. Examine transfer restrictions, consent machinery, probate/succession records, reasons and precedent.

Forced or undervalue buyout pressure. A controller threatens to use company funds or voting power to force the applicant to sell at a discounted price, or manipulates accounts/operations to depress value before purchase. Preserve offers, valuation dates, forecasts and transaction timing.

Share-register or beneficial ownership manipulation. The register is altered, shares are reallocated, proxies or nominees are used, or filings misstate ownership. Seek rectification under the relevant statutory route and interim preservation; unfair-prejudice relief may accompany, but not replace, precise register relief.

Unequal rights or class-right variation. A class is stripped of voting, dividend or conversion rights through an invalid or unfair variation, restructuring or scheme. Check class consent protections, articles, statutory procedures and actual prejudice.

Amending articles to remove protections. A majority changes quorum, board appointment, reserved matters, transfer or pre-emption protections to defeat negotiated expectations or entrench itself. A constitutional amendment is not automatically unfair; prove purpose, context, effect and any contractual limits.

D. Information, accounts and corporate process

Withholding accounts, records or inspection. A member is denied statutory documents, financial statements, notices or legitimate access needed to monitor the investment. Identify the exact entitlement and request; seek targeted disclosure, not unfocused discovery.

False, incomplete or delayed financial reporting. Accounts omit liabilities, related-party dealings, contingent liabilities or revenue; reporting delays prevent informed voting or conceal value diversion. Engage a forensic accountant and compare source documents, tax filings and bank statements.

Failure to appoint/retain an auditor or obstructing audit. Controllers prevent an independent audit, remove the auditor after adverse findings, or restrict access. Prove statutory requirements, auditor communications, board minutes and resulting concealment or prejudice.

Manipulated minutes, resolutions or filings. Minutes are backdated, signatures forged, resolutions misdescribed or BRS filings made without authority. Secure originals, metadata, attendance, signatory exemplars, filing histories and expert evidence where needed.

Selective enforcement of constitutional rules. Rules are invoked against the applicant but waived for the majority or aligned members. Compare like cases and explain the unfairness, not just inconsistency.

Obstruction of member requisition or vote. A valid meeting requisition, poll, proxy or resolution is ignored or frustrated. Establish compliance with statutory thresholds and timelines, service and the company's response.

E. Fraud, bad faith, retaliation and abuse of power

Fraudulent transfers, forgery or false filings. Alleged forged share transfers, false minutes, false charges, fictitious creditors or dishonest BRS filings may support urgent relief, but plead particulars: who, what, when, document, knowledge, reliance, benefit and loss. Fraud is not proved by suspicion or unexplained accounting alone.

Concealment and destruction of records. Records are hidden, deleted, altered or withheld after a dispute or audit request. Show custody, duty to preserve, timing, access, missing records and reasonable inference; seek preservation and forensic imaging.

Retaliation against whistleblowing or dissent. A member is excluded, diluted, denied distributions or stripped of a role after raising misconduct or refusing an improper transaction. Establish protected complaint, chronology, decision-makers' knowledge, departure from ordinary process and causation.

Abuse of majority power or bad-faith voting. A vote is used to secure a collateral personal advantage or injure a member, rather than advance a bona fide company interest. Identify conflict, improper purpose, alternatives, selective effects and value flows.

Oppressive use of litigation or regulatory complaints. Company resources are deployed to intimidate or exhaust a dissenting member, or proceedings are used to freeze their rights while insiders continue extracting value. Prove misuse and avoid turning ordinary adversarial litigation into an unfair-prejudice claim.

Conflicts of interest and undisclosed competing interests. Directors or controlling members transact with the company, compete, or use confidential information without disclosure/approval. A genuine conflict may justify action against the applicant, so test evidence and apply even-handedly.

F. Special settings and mixed-capacity disputes

Family company and succession conflict. A death, marriage breakdown, succession or generational transition changes control, management and access to assets. Separate estate standing and transmission, beneficial ownership, directorship, family expectations and company property; do not treat family status as a substitute for membership.

Joint venture or investor-founder breakdown. Investor vetoes, founder removal, milestone disputes, IP ownership, reserved matters or financing obligations fracture governance. Read investment documents and side letters together with articles; identify whether the real remedy is contractual arbitration, oppression relief or both.

Employment, salary and service-role dispute. A member-director is dismissed or unpaid. Separate employee entitlements from shareholder rights, but consider whether employment/management was an agreed incident of participation in a quasi-partnership and whether selective payments extract company value.

Regulated, listed or public-interest company. Market disclosure, CMA oversight, regulated governance, minority protections and public interest may materially affect relief. Coordinate with regulator and applicable sector statutes; preserve market-sensitive material and conflicts.

Company is insolvent or near insolvency. A member dispute intersects with creditor interests, preferences, asset transfers, receivership or administration. Relief must not improperly prejudice creditors; assess Insolvency Act routes, directors' duties and whether liquidation is the more suitable remedy.

04 Deadlock and quasi-partnership analysis

4.1 Deadlock diagnosis

Deadlock exists where required decisions cannot be made under the voting, quorum or board arrangements. It can be shareholder-level, board-level, or operational despite formal majority control. Diagnose: ownership percentages; voting rights and classes; board composition; quorum; chair/casting vote; reserved matters; appointment/removal powers; bank mandates; and any deadlock escalation clause.

- List each decision blocked and the date, notice, votes and consequences.
- Separate genuine disagreement about strategy from refusal to comply with agreed governance.
- Determine whether the company is still trading, solvent, funded and capable of operating under interim safeguards.
- Identify whether one side controls assets or records despite the formal equality.
- Test contractual deadlock mechanisms first: negotiation, expert determination, mediation, Russian roulette/Texas shoot-out, put/call, arbitration or sale process.
- Assess whether the clause is valid, was triggered correctly, can be performed, and produces a fair value outcome in the circumstances.

4.2 Quasi-partnership indicators

A small private company may function as a quasi-partnership where there is a personal relationship of mutual confidence, an understanding that particular shareholders participate in management, and restrictions or practical barriers to freely selling shares. No single feature is conclusive. The analysis explains why exclusion can prejudice a member beyond the market value of shares; it does not guarantee a buyout or excuse the applicant's own misconduct.

- Was there an express or implied promise that each founder/shareholder would manage?
- Did the articles or shareholder agreement reserve board seats or specific functions?

- Was management participation consistently practised over time?
- Were shares acquired because the parties intended to work together, rather than as passive investment?
- Is there a realistic market or transfer route for the applicant's shares?
- Did the applicant contribute capital, IP, clients, labour, guarantees or reputation in reliance on participation?
- Did the applicant's own conduct cause a legitimate loss of trust or make continued participation impracticable?

4.3 Deadlock remedies ladder

SITUATION	POTENTIAL DIRECTION
Short-term paralysis; business viable	Interim rules for ordinary-course decisions, payments, access, notices, quorum, dual sign-off and independent chair.
Disputed transactions but relationship salvageable	Independent forensic review, information access, conflict protocol, mediation, reserved-matter clarification.
Permanent breakdown; one side wants exit	Buyout at fair value with valuation date, methodology, access to records, interest, payment security and completion mechanics.
Control group refuses fair exit; company can redeem lawfully	Company purchase under s.782(2)(e), subject to statutory capital/solvency requirements, approvals and financing.
No workable buyout or viable business; creditors protected	Consider winding up on just and equitable/other statutory grounds as a separate or alternative remedy; explain why s.782 cannot adequately cure the position.

05 Respondent and defence-side analysis

A good defence addresses the statutory elements with documents and a credible commercial explanation. Avoid relying solely on majority power or technical compliance where the pleaded case alleges bad faith, legitimate expectations or a course of extraction.

- Standing challenge: prove register status, transfer/transmission, disputed beneficial ownership or lack of capacity.
- Particularisation: identify vague allegations, dates, actors, transactions, member interests and causal links not pleaded.
- Member-capacity challenge: distinguish employment, director, creditor, family or personal grievances from member prejudice.
- No unfairness: show valid authority, proper notice, independent advice, conflict disclosure, fair process, commercial rationale and consistent treatment.
- No prejudice or causation: show the alleged act did not reduce value, impair rights, or affect the applicant as a member.
- Ratification, consent, waiver, acquiescence or limitation: establish informed approval and its legal effect; do not assume silence cures fraud or continuing prejudice.
- Applicant's conduct: show competing business, breach of duties, obstruction, undisclosed conflict, non-performance or actions contributing to deadlock.

- Alternative remedy: point to arbitration, contractual buy-sell mechanism, derivative action, rectification, employment claim, debt recovery or winding-up route as appropriate.
- Remedy proportionality: oppose vague supervision, excessive injunctions, forced transfers without valuation safeguards, or relief that harms the company and creditors.
- Parallel proceedings and abuse: map every suit, arbitration, interim order and appeal; explain overlap and avoid inconsistent orders.

In *Patel v Odex Chemicals Limited & 2 others* [2026] KEHC 10410 (KLR), the High Court treated a collection of complaints—director removal, information access, bonuses, dividends and exclusion—as insufficient where the evidence showed a genuine competing-enterprise concern and the overall case was a shareholder breakdown rather than proven oppression. The case is a reminder that a catalogue of grievances is not proof; each needs evidentiary and statutory linkage.

06 Evidence and investigation plan

6.1 Core company records

- Current and historical register of members; share certificates; allotment, transfer and transmission records; beneficial ownership records; BRS returns and filed resolutions.
- Articles of association, memorandum if relevant, shareholders agreement, investment agreement, side letters, options, loan instruments, guarantees and amendments.
- Board and general-meeting notices, agendas, attendance, proxies, minutes, resolutions, written consents, quorum/voting calculations and directors' appointment/removal notices.
- Annual financial statements, management accounts, budgets, ledgers, trial balances, tax returns, audit reports, auditor correspondence and dividend records.
- Bank statements, mandates, loan documents, charge instruments, payment approvals, mobile-money records and cashbooks.
- Contracts with related parties, procurement files, tenders, leases, IP assignments, customer lists, supplier records, payroll and expense claims.
- Emails, WhatsApp/business messaging, calendars, electronic signatures, cloud audit trails, accounting-system logs and document metadata.
- Court, arbitration and regulator records; demand letters; mediation proposals; settlement offers; inspection requests and responses.

6.2 Evidence by allegation

ALLEGATION	PROOF PACKAGE
Deadlock	Constitutional voting map; meeting chronology; failed resolutions; blocked decisions; operational/financial consequences.
Exclusion	Earlier role and understanding; notices denied; access changes; meeting minutes; comparative participation; share value context.
Diversion	Related entity search; beneficial ownership; contracts; invoices; customer/staff/IP movement; bank tracing; margin analysis.

ALLEGATION	PROOF PACKAGE
Self-remuneration	Payroll, board approvals, market comparators, benefit schedules, profit/dividend comparison, conflict declarations.
Dilution	Cap table; issue authority; valuation; pre-emption notice; funding need; use of proceeds; voting effect.
Fraud/forgery	Specific document; original/metadata; signature exemplars; filing trail; signatory access; transaction benefit; forensic report.
Information denial	Exact request; legal entitlement; service proof; refusal/non-response; resulting inability to vote/monitor; repeated pattern.
Threatened asset sale	Title/charge searches; draft transaction; board papers; buyer/affiliate connection; valuation; imminent completion evidence.

6.3 Evidence hygiene and privilege

Issue a preservation notice promptly. Secure originals and native electronic files with metadata. Record who collected each item, when, from which system and whether it was altered. Avoid accessing accounts or devices without authority. Separate privileged legal advice from ordinary business records; do not waive privilege by indiscriminate annexing. Mark hearsay and explain the source. For fraud, plead particulars and support them with admissible evidence; reserve inferences for the evidence that makes them reasonable.

6.4 Accounting and valuation experts

A forensic accountant can trace related-party flows, reconstruct books, quantify diverted margin, test director benefits and identify missing records. A valuation expert should be briefed on the pleaded exit theory, not just asked for a headline figure. Give instructions on valuation date, standard/basis, control and marketability discounts, quasi-partnership context, disputed transactions, contingent liabilities, tax, shareholder loans, goodwill, IP and alternative scenarios. Consider a joint expert or single expert where it can narrow issues.

07 Procedure and interim protection

7.1 Initiating process

Section 780 says an application may be made to the Court, but the precise originating process and case management should be checked against current Kenyan procedural rules, the Commercial and Tax Division practice directions and the latest authorities. Kenyan decisions have entertained petitions and applications. In *Njama Wambugu v Winfrida Wanjiku Ngumi & another* [2020] KEHC 9664 (KLR), the court stressed that the member must establish the member-capacity interest and declined interim relief where allegations were insufficiently evidenced. In *John Muturi Nyaga v Graham Alexander Walsh & 3 others* [2017] KEHC 4617 (KLR), the court observed that the process must allow substantive interrogation and interlocutory relief, and that a section 780 application may be a separate route where properly pursued. Plead the case fully, attach evidence, identify the company as a respondent, and seek directions rather than assuming a bare motion is sufficient.

Check jurisdiction, parties and service. Section 782(4) expressly entitles the company to notice and a hearing. Join alleged controlling actors where personal conduct or consequential orders are pleaded, while keeping the statutory relief directed to the company and the specific alleged wrongdoers. Consider the Attorney-General or Registrar only where legally necessary for the relief sought; avoid unnecessary parties.

7.2 Interim orders

Where there is imminent dissipation, dilution, transfer, destruction of records or irreversible change, seek narrowly tailored preservation relief. State the statutory basis, facts establishing urgency, evidence of a real threat, balance of convenience, effect on the company and why damages or final relief would be inadequate. If seeking a proprietary restraint, identify the asset and risk; avoid freezing the whole business without a transaction-specific basis.

- No new shares, options or voting rights pending hearing, except by consent/court leave.
- No disposal, charge or transfer of identified material assets or related-party transactions outside ordinary course.
- Preservation and forensic imaging of specified company records and systems.
- Access to specified management accounts, bank statements, board minutes or audit records, with confidentiality safeguards.
- No change to bank mandates or signing authorities, or require dual signatures for defined material payments.
- Notice and service of board/member meetings; no resolutions on identified reserved matters without notice to applicant.
- Independent observer, receiver/manager, inspector or auditor only where a clear statutory basis and evidence support such intrusive relief.
- Liberty to apply and an expedited timetable for pleadings, disclosure, valuation and hearing.

7.3 Parallel routes and case management

Map potential overlap with derivative proceedings (sections 238 onwards), director-removal proceedings, register rectification, arbitration, employment claims, insolvency processes, criminal complaints, regulatory investigations and winding up. Avoid duplicative relief and inconsistent factual positions. Section 782(2)(c) expressly accommodates company proceedings within an unfair-prejudice order, but the company's claim belongs to the company. A member's personal exit price should not quietly include corporate claims unless the valuation/order specifies how the company's recovery is treated.

08 Remedies and order design

8.1 Remedy menu under section 782

RELIEF TYPE	EXAMPLES	DRAFTING SAFEGUARDS
Regulate future conduct	Board composition, notices, quorum, information access, budgets, related-party policy, independent chair.	Define duration, scope, reporting, decision thresholds and variation process.
Prohibitory	Stop a proposed issue, transfer, diversion, related-party contract, exclusion or constitutional change.	Name the act, asset, parties and duration; preserve ordinary-course operations.
Mandatory	Provide accounts, convene meeting, reverse an unauthorised entry, make a filing or perform a corporate act.	Specify responsible officer, deadline, documents, evidence of compliance.
Authorised company proceedings	Permit named person(s) to sue in company name for recovery, account or other corporate relief.	Define claims, control of litigation, costs, settlement consent and recovery destination.
Constitutional restraint/amendment	Require leave before specified articles are altered; direct a tailored amendment if justified.	Link to ss.783–784 filing; attach exact amendment text.
Buyout	Other members or company purchase shares under s.782(2)(e).	Fix valuation machinery, date, discounts, interest, payment security, completion and default.
Other appropriate order	Declarations, accounting, independent review, meeting, document access, costs or ancillary directions.	Tie each order to the proved unfairness and statutory power; avoid overbreadth.

8.2 Tailor relief to the harm

If the wrong is exclusion, consider restoring participation or a fair exit. If the wrong is diversion, preserve evidence, stop ongoing diversion and authorise recovery for the company. If the wrong is dilution, consider setting aside or neutralising the issue, restoring voting position or a value-adjusted buyout. If the wrong is deadlock, decide whether governance can realistically be repaired; if not, design an exit or explain why winding up is necessary.

8.3 Avoid unworkable supervision

An order that requires the Court to approve ordinary business decisions indefinitely is often impractical. Prefer clear temporary rules, objective thresholds, independent mechanisms and a sunset/review date. Do not ask for “all such other orders” as a substitute for a detailed operational design.

09 Valuation and exit mechanics

A buyout is often the cleanest remedy for an irretrievable private-company relationship, but valuation is a major merits issue. The order should prevent the wrongdoer from benefiting from the conduct that made the exit necessary and should avoid giving the applicant a windfall.

- Valuation date: ordinarily consider the date before the unfair conduct, the petition date, a transaction date, or the date of order; explain why the selected date best removes the unfairness.
- Basis: going concern, fair value, investment value or another standard; specify whether the company is valued as a whole and the applicant's proportion applied.
- Discounts: address minority/control and marketability discounts expressly. A quasi-partnership or forced exit may support no minority discount, but it is not automatic; plead evidence and authority.
- Add-backs and adjustments: director remuneration, related-party charges, diverted opportunities, asset undervaluation, undisclosed liabilities, shareholder loans, tax exposures and contingent claims. Avoid double counting.
- Treatment of corporate claims: state whether the company value includes claims being litigated under s.782(2)(c), and how recovered sums affect consideration.
- Information and expert process: define document access, management projections, expert selection, joint instructions, site inspection, timetable and resolution of disputes.
- Payment: lump sum or instalments, deposit, interest, security, escrow, guarantees, default interest and consequences of non-payment.
- Completion: transfer documents, resignation from office, releases, warranties, tax/stamp obligations, continuing confidentiality, delivery of company property and mutual releases.
- Company purchase: confirm applicable share-purchase/capital-maintenance rules, solvency, approvals, funding and capital reduction; s.782(2)(e) does not remove other statutory requirements.
- Fallback: if a buyer defaults or price cannot be fixed, provide a sale process, independent expert determination or further directions.

10 Pleading and affidavit framework

10.1 Petition/application structure

1. Parties, incorporation, registered office, shareholding and standing; attach the current register and relevant transfer/transmission evidence.
2. Company constitution, shareholder agreement, board arrangements and any quasi-partnership facts relied on.
3. Concise relationship history: origin of business, contributions, roles, management understandings and investment assumptions.

4. Chronological particulars of each act/omission, who acted, authority claimed, date, document and company connection.
5. For each allegation: affected member interest, prejudice, unfairness, causation and evidence.
6. State whether conduct is continuing, historical, threatened or proposed; identify urgency and risk of irreversibility.
7. Deal fairly with adverse facts, prior proceedings, applicant's conduct, competing interests and any available contractual mechanism.
8. Identify corporate wrongs and member-level prejudice separately; plead derivative authorisation where corporate recovery is sought.
9. Set out final and interim relief in ranked alternatives, each tied to a statutory power and supported by proposed order wording.
10. Address valuation, buyout funding, company purchase constraints, creditor effects and implementation timetable.

10.2 Evidence in the supporting affidavit

Use a first-person factual affidavit that authenticates documents and explains the applicant's knowledge. Avoid turning the affidavit into submissions. Attach an indexed, paginated bundle with a short document description and stable exhibit marks. For records held by respondents, identify prior requests, why the material is relevant, and the proposed targeted disclosure route.

10.3 Particulars of fraud or dishonesty

If fraud, forgery, concealment or deliberate misrepresentation is alleged, plead the particular dishonest act, actor, date or period, document/transaction, knowledge or intention, recipient/beneficiary, reliance or company effect, and loss/prejudice. Identify direct evidence separately from inference. Seek preservation, disclosure or forensic investigation where credible material exists; do not use "fraud" as a label for poor governance, unexplained accounting or hostile conduct.

10.4 Relief prayer template

A fact-specific prayer may seek: (i) a declaration that identified conduct is oppressive/unfairly prejudicial under s.780; (ii) an injunction or mandatory order under s.782 stopping/curing specified conduct; (iii) defined accounting and disclosure; (iv) authorisation under s.782(2)(c) for named company proceedings on stated terms; (v) a buyout under s.782(2)(e) on detailed valuation and completion terms; (vi) a restraint on constitutional amendments under s.782(2)(d); (vii) directions for ss.783–784 filing where the order changes the constitution; (viii) costs, interest and liberty to apply. Avoid asking the Court to decide valuation without proposing a transparent methodology and timetable.

11 Case-preparation workflow

PHASE	ACTIONS	DELIVERABLE
1. Intake	Identify client capacity, membership, objective, urgency, company form, parties and every parallel process.	Standing and risk note.
2. Governance map	Obtain constitution, shareholder agreement, register, cap table, voting and board-control chart.	One-page control diagram.
3. Chronology	Date each meeting, request, transaction, exclusion, payment and proposed act.	Master chronology with source references.
4. Legal theory	Map conduct to member interest, prejudice, unfairness and remedy; separate corporate and personal claims.	Allegation matrix.
5. Evidence capture	Preserve records, obtain BRS filings, bank/financial data and communications; identify missing material.	Indexed evidence plan and preservation letters.
6. Financial analysis	Trace value flows, assess solvency, quantify loss, and brief forensic accountant/valuer.	Preliminary loss and valuation model.
7. Interim strategy	Assess imminence, irreversibility, status quo, company operations and creditor impact.	Proposed interim order and urgency affidavit.
8. Pleadings	Choose process, join necessary parties, plead facts and particulars, identify evidence and ranked relief.	Petition/application, affidavits, draft orders.
9. Resolution options	Compare governance repair, mediation, contractual exit, buyout, derivative claim and winding up.	Client options paper with cost/time/risk.
10. Trial readiness	Disclosure, expert evidence, witness map, admissions, agreed issues, order mechanics and costs.	Hearing bundle and final relief schedule.

12 Authorities and research sources

Read full judgments and check whether a passage is ratio, obiter, an interlocutory finding or a fact-specific application. The statutory text controls; decisions should be applied with attention to company type, evidence and procedural posture.

12.1 Kenyan authorities

Velani & 6 others v Naran & 2 others [2021] KEHC 75 (KLR) (21 September 2021). Core Kenyan explanation of oppressive/unfair-prejudice concepts; prejudice and unfairness; legitimate expectations and quasi-partnership; categories include management exclusion, diversion, excessive benefits, abuse of power, failures to hold AGMs and provide accounts. It also cautions that technical breach alone may not suffice.

<https://new.kenyalaw.org/akn/ke/judgment/kehc/2021/75/eng@2021-09-21>

Zillow Limited & another v Alaska Limited & another [2021] KEHC 328 (KLR) (10 December 2021). Equal-shareholder deadlock was not, without more, oppression/unfair prejudice; court noted the statutory route is not excluded for equal shareholders where facts warrant relief and actual control exists. The matter was dismissed on its facts.

<https://new.kenyalaw.org/akn/ke/judgment/kehc/2021/328/eng@2021-12-10>

Siro Brugnoli & another v Giancarlo Camerucci & another [2016] KEHC 2625 (KLR). Recognises serious shareholder deadlock and considers disengagement/winding up and alternative remedy in the company context. Use for deadlock/remedy context, not as a holding that deadlock alone proves s.780 unfair prejudice.

<https://new.kenyalaw.org/akn/ke/judgment/kehc/2016/2625>

Njama Wambugu v Winfrida Wanjiku Ngumi & another [2020] KEHC 9664 (KLR) (29 April 2020). Emphasises member qua member standing/interests, evidentiary support for allegations, and limits on using s.780 to preserve a directorship absent proof and statutory unfairness; interlocutory application dismissed.

<https://new.kenyalaw.org/akn/ke/judgment/kehc/2020/9664/eng@2020-04-29>

John Muturi Nyaga v Graham Alexander Walsh & 3 others [2017] KEHC 4617 (KLR) (15 June 2017). Discusses the relationship between a section 780 application and other proceedings; later cases cite it for the view that the chosen process must allow specific pleading of oppression/unfair prejudice and proof through oral or affidavit evidence.

<https://new.kenyalaw.org/akn/ke/judgment/kehc/2017/4617/eng@2017-06-15>

Patel v Odex Chemicals Limited & 2 others [2026] KEHC 10410 (KLR) (2 July 2026). Recent application of s.780: multiple allegations of director removal, information denial, bonuses, dividends and exclusion were not enough where evidence showed a genuine competing-business concern and the case did not establish statutory unfairness. Specific relief was granted on admitted dividend entitlement/information in part.

<https://sheriahub.com/cases/ke/caselaw/patel-v-odex-chemicals-limited-2-others-2026-kehc-10410-klr>

Adan v Farah & 3 others [2021] KEHC 107 (KLR) (1 October 2021). Discusses the relationship between derivative litigation and alternative s.780 relief, including proposed valuation/buyout and dividend claims. Read the full procedural history before relying on it.

<https://sheriahub.com/cases/ke/caselaw/adan-v-farah-3-others-civil-suit-100-of-2016-2021-kehc-107-klr-commercial-and-tax-1october-2021-ruling>

Space and Style Limited & another v Wambugu & 4 others [2023] KECA 412 (KLR) (14 April 2023). Appellate litigation arising from the broader founder/shareholder conflict; useful for checking procedural history, interim orders and related claims before relying on the High Court proceedings.

<https://new.kenyalaw.org/akn/ke/judgment/keca/2023/412/eng@2023-04-14>

12.2 Statutory and official materials

- Companies Act, 2015 (Cap. 486), current published consolidation available from Kenya Law; verify amendments and consolidated text.

<https://new.kenyalaw.org/akn/ke/act/2015/17/eng@2015-09-18>

- Business Registration Service, Companies Act resources.

<https://brs.go.ke/acts/>

- Companies Act consolidated to 27 December 2024, Laws of Kenya mirror.

<https://www.ubutabera.com/public-laws/kenya/companies-act>

- Capital Markets Act and applicable CMA rules where company is regulated/listed; Insolvency Act where rescue/liquidation/creditor interests arise.

<https://new.kenyalaw.org/>

12.3 Comparative authorities referred to in Kenyan reasoning

Kenyan courts have drawn on common-law authorities for the flexible but structured unfair-prejudice concept. Velani refers, among others, to *Re Brenfield Squash Racquets Club Ltd* [1996] 2 BCLC 184 for prejudice beyond direct economic loss in quasi-partnership circumstances. Use comparative authorities as persuasive context only, and prioritise Kenyan statutory text and binding Kenyan appellate decisions.

13 Quick decision tools

13.1 Ten questions before filing

- Can the applicant prove membership or s.780(2) transfer/transmission status?
- What exact act, omission or course of conduct is complained of, and who did it?
- Is the company's affairs/act/omission involved, rather than only a private dispute?
- Which member interest is affected, and in what capacity?
- What prejudice has occurred or is likely, and how is it evidenced?
- What makes the prejudice unfair in light of the articles, agreements, expectations and course of dealing?
- Are the claims personal, corporate, or both—and is derivative authority required?
- What does the applicant want: participation, correction, recovery, buyout, or winding up?
- Can the proposed order be implemented and funded without harming creditors or ordinary operations?
- What is the strongest adverse fact, and have we addressed it candidly?

13.2 One-page allegation matrix

DATE / ACT	ACTOR / COMPANY LINK	MEMBER INTEREST	PREJUDICE	WHY UNFAIR	EVIDENCE	RELIEF

Practical drafting annex

Use these working forms as drafting scaffolds. Replace every bracketed field, verify each statutory and procedural reference, and remove any allegation that cannot responsibly be pleaded on the available instructions. They are not forms prescribed by the Court.

Annex A Client intake and first conference questionnaire

- What is the exact company name, registration number, type, registered office and principal business?
- Who is the proposed client, and in what capacities does the client act: member, director, employee, creditor, beneficial owner, personal representative or guarantor?
- How many shares and votes does the client hold? When and how were they acquired? Is the client entered in the register of members? Are transfer or succession steps incomplete?
- Who are all members, directors, beneficial owners, nominees and connected entities? Who actually controls banking, staff, records, contracts and filings?
- What do the articles and any shareholder/investment agreement say about board seats, quorum, reserved matters, vetoes, pre-emption, transfers, dividends, deadlock and dispute resolution?
- What was said or understood about participation in management when the client invested or joined? Who heard it, and what documents or conduct corroborate it?
- What are the ten most important events, with dates, actors, documents, witnesses and consequences?
- Is there a specific imminent transaction, meeting, share issue, asset sale, charge, payment or record deletion? What proves timing and imminence?
- What is the applicant's desired outcome: restored participation, information, correction of a transaction, company recovery, buyout, sale, winding up or another order?
- What is the company's current financial condition, solvency, workforce, operations, creditor exposure and ability to fund a buyout?
- What has the client done that the other side may rely on, including competing activity, missed funding, conflicts, failed duties, consent, acquiescence or breach?
- What other proceedings, arbitrations, mediations, criminal reports, regulatory processes, injunctions or settlement offers exist?

Annex B Pleading scaffold for a section 780 application

Caption and title: In the High Court of Kenya at [station], Commercial and Tax Division; [case number]; [applicant] v [company] and [necessary respondents]. Use a petition or other originating process that permits clear particularisation and proof, consistently with current court directions and

the procedural authorities.

1. The Applicant is [name, description, address for service] and is a member of the Respondent Company by reason of [number/class of shares; date and mode of acquisition; entry in register]. If relying on section 780(2), plead the transfer or transmission and attach the supporting instrument/order.
2. The Company is [name, number, type, registered office, business]. Its members, share capital, voting rights and board composition are [set out in a dated table].
3. The Company is governed by [articles and agreements]. Relevant clauses on [board appointment/quorum/meetings/transfers/reserved matters/dividends] are [quote accurately and identify exhibit].
4. The parties established or acquired the Company in [year/context]. The Applicant contributed [capital/IP/work/guarantees/clients] and the parties' agreed or consistently practised management arrangement was [specific terms and evidence].
5. From [date] to [date], the Respondents and/or the Company did or omitted the following specific acts: [number each act, date, actor, authority asserted, source document, and whether ongoing/proposed].
6. The acts concern the Company's affairs or an actual/proposed act or omission of the Company because [explain attribution, agency, board decision, implementation or ratification].
7. The conduct prejudices the Applicant's interests as a member by [state voting, participation, information, distribution, capital or value impact; quantify where reasonably possible]. The prejudice is unfair because [constitutional breach, departure from agreement/understanding, selective treatment, concealment, conflict, improper purpose or other facts].
8. The Applicant distinguishes any employment/directorship/contract claims from member-level prejudice. To the extent the Company itself suffered loss from [wrong], the Applicant seeks [authorisation for a company claim under s.782(2)(c)/separate derivative relief], not payment of the Company's loss as an individual debt.
9. The conduct is [continuing/historical/threatened]. The risk requiring interim relief is [specific event/date/transaction], supported by [documents/witnesses].
10. The Applicant has [invoked relevant internal process/proposed mediation/requested information] on [dates]. The response was [describe]. Any alternative mechanism is [explain availability, trigger and why it does/does not resolve the statutory prejudice].
1. Relief is sought under section 782 to [state realistic outcome]. The Company is served and will be heard as required by section 782(4).

Annex C Illustrative prayers to customise

Select only relief supported by pleaded facts, evidence and a clear statutory basis. Consider ranking alternatives so that the Court can grant effective relief without supervising routine management.

- A declaration that the specifically identified conduct in paragraphs [] constitutes conduct within section 780(1)(a) and/or (b) of the Companies Act, 2015.
- Pending hearing, an order restraining [named parties/company] from [specific proposed share issue, asset transfer, charge, related-party transaction or destruction/alteration of identified records], except in the ordinary course or with leave of Court.
- An order requiring the Company by [date] to provide [identified categories and period] of accounts, bank statements, board minutes, contracts and management accounts, subject to confidentiality and redaction directions.
- An order regulating future conduct under section 782(2)(a), including [meeting notice, quorum, information access, independent review or payment controls], for [duration] and subject to review on [date/event].
- An order requiring the Company to [perform specified omitted act] or to refrain from [specified act] under section 782(2)(b).
- An order under section 782(2)(c) authorising [named person] to bring and conduct in the Company's name proceedings against [persons] for [defined claims], on terms concerning control, costs, settlement and the destination of recoveries.
- In the alternative, an order under section 782(2)(e) that [named purchaser(s)] purchase the Applicant's [number/class] shares at fair value determined as at [proposed date] by [expert process], with directions on discounts, adjustments, information, interest, security, completion and default.
- If a constitutional alteration is ordered or authorised, directions requiring compliance with sections 783 and 784, including lodgement within the statutory period and circulation of the amended instrument.
- Costs, interest where appropriate, liberty to apply, and such further directions as are necessary to implement the specific relief granted.

Annex D Interim application and evidence checklist

REQUIRED COMPONENT	DRAFTING PROMPT
Urgency	What event will occur, by whom, and when? Identify the source showing a real threat.
Statutory link	Which s.780 conduct does the proposed act continue or threaten, and how does s.782 support the requested restraint or direction?
Status quo	Describe the current legal and operational position to preserve; identify any change already made.
Prejudice	Explain why later damages, accounting or a buyout will not adequately repair the harm.
Proportionality	Limit the order to identified assets, transactions, records, decisions or time period; preserve ordinary business activity.

REQUIRED COMPONENT	DRAFTING PROMPT
Company impact	Address payroll, suppliers, customers, safety, compliance, financing and creditor interests.
Undertakings and safeguards	Consider undertaking as to damages where applicable, dual-signature limits, permitted ordinary-course payments and liberty to apply.
Proof	Attach notices, draft contracts, bank or registry records, board material, correspondence and a concise chronology.
Service	Serve the company and affected parties; explain any request for shortened time or interim ex parte relief.
Return date	Propose an expedited inter partes hearing and a timetable for response evidence and submissions.

Annex E Draft order architecture

1. Definitions: identify the Company, Applicant, Respondents, disputed shares/assets, transaction and relevant records precisely.
2. Operative protection: state the exact act prohibited or required, the persons bound, permitted ordinary-course exceptions and duration.
3. Information/access: list records, formats, date ranges, access method, confidentiality protections and delivery deadlines.
4. Governance: specify meeting notice, quorum, voting, independent chair/reviewer or reserved matters only where necessary; define sunset and review.
5. Company proceedings: state the authorised claimant, causes of action, litigation control, funding, settlement approval and treatment of recoveries.
6. Buyout: set purchaser, number/class of shares, valuation standard/date, expert appointment, information rights, costs, interest, security, completion and consequences of default.
7. Constitution and Registrar: attach exact amendments; assign responsibility for filing and circulation under sections 783–784; provide for service on the Registrar if directed.
8. Compliance and enforcement: deadlines, sworn confirmation or proof of filing, liberty to apply, costs and consequences of non-compliance.

Annex F Hearing preparation and cross-examination themes

Questions should test the pleaded case and remain tied to admissible evidence. Avoid argumentative or speculative questions that outrun the record.

WITNESS	USEFUL ISSUE AREAS
Applicant/member	Share acquisition and register status; investment purpose; management understanding; requests and exclusions; voting/dividend/information rights; loss; own conduct; remedy preference and ability to complete a buyout.
Controlling member/director	Actual control; decision-making process; notice and quorum; conflicts and disclosures; related entities; transaction purpose and consideration; financial benefits; treatment of applicant; response to records requests; proposed exit.
Company secretary/records custodian	Register history; meeting notices/minutes; filing authority; resolutions; books retained; access requests; missing or altered records; compliance with ss.783–784 if applicable.
Accountant/auditor	Reliability of accounts; related-party balances; unexplained payments; dividends/profits; solvency; missing documents; quantification and limitations.
Valuation expert	Valuation date and basis; assumptions; data relied on; control/marketability discount; quasi-partnership context; add-backs; disputed corporate claims; sensitivity and alternative values.



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This Bible is general guidance on sections 780 to 784 of the Companies Act, 2015. It is not legal or tax advice on any specific matter.