



**Hanspal (Executor and Beneficiary of the Late Inderjit Singh Hanspal) v Alcon Holdings Ltd & 3 others (Miscellaneous Civil Application E781 of 2023) [2023] KEHC 25851 (KLR) (Commercial and Tax) (30 November 2023) (Ruling)**

Neutral citation: [2023] KEHC 25851 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
MISCELLANEOUS CIVIL APPLICATION E781 OF 2023**

**AA VISRAM, J**

**NOVEMBER 30, 2023**

**IN THE MATTER OF THE COMPANIES ACT NO. 17 OF 2015 LAWS OF KENYA**

**AND**

**IN THE MATTER RECTIFICATION OF THE  
COMPANY REGISTER OF ALCON HOLDINGS LTD**

**AND**

**IN THE MATTER RECTIFICATION OF THE  
COMPANY REGISTER OF ALCON HOLDINGS LTD**

**BETWEEN**

**VIJAY HANSPAL (EXECUTOR AND BENEFICIARY OF THE LATE INDERJIT SINGH HANSPAL) ..... APPLICANT**

**AND**

**ALCON HOLDINGS LTD ..... 1<sup>ST</sup> RESPONDENT**

**THE REGISTRAR OF COMPANIES ..... 2<sup>ND</sup> RESPONDENT**

**ALKA ROSHANLAL HANSPAL & MAMTA R. SHARMA (AS ADMINISTRATRIXES OF THE ESTATE OF KULTAR HANSPAL, SHAREHOLDER) ..... 3<sup>RD</sup> RESPONDENT**

**JASPRIYA KAUR HANSPAL & SACHA KAUR HANSPAL (EXECUTORS AND BENEFICIARIES OF THE ESTATE OF DAVINDER SINGH HANSPAL) ..... 4<sup>TH</sup> RESPONDENT**



## RULING

1. This ruling relates to the Applicant's Notice of Motion dated 7<sup>th</sup> September, 2023 ('the Application'), brought under Sections 103, 134 and 135 of the Companies Act, No. 17 of 2015, seeking the following orders: -
  1. SPENT
  2. SPENT
  3. The register of members of the Alcon Holding Limited (the 1<sup>st</sup> Respondent) be reconstructed and/or rectified to reflect the Applicant (VIJAY HANSPAL) as the holder of 333 shares currently registered in the name of Inderjit Singh Hanspal.
  4. The register of members of the Alcon holding Limited (the 1<sup>st</sup> Respondent) be reconstructed / or rectified to reflect the 4<sup>th</sup> Respondent (JASPRIYA KAUR HANSPAL & SACHA KAUR HANSPAL) as joint holders of 333 shares being the undisputed shares of Davinder Singh Hanspal.
  5. The Applicant be given permission to prepare and /or make necessary entries in the company register to reflect the above changes.
  6. The Registrar of Companies (the 2<sup>nd</sup> Respondent ) be ordered to link the above company and/ or make adjustments or changes to the Register or Record at the companies registry to reflect the above following undisputed shareholding and Directorship of the company:-

Shareholder and Director	Shareholding
Vijay Hanspal	333 shares
Jaspriya Kaur Hanspal Singh & Sacha Kaur Hanspal	333 shares (jointly)

7. The 334 out of 1000 shares issued by Alcon Holdings Limited that are the subject of litigation between the 3<sup>rd</sup> and 4<sup>th</sup> Respondent to be included in the Register of Alcon Holdings Ltd upon determination of Nairobi (Milimani Com & Tax Division) E032 of 2021 (previously JR No. 092 of 2021), Alka Roshanlal Hanspal vs the Registrar of Companies, Vijay Hanspal (as Administrator of the Estate of Inderjit Hanspal Singh) and Jaspriya Kaur Hanspal Singh & Sochna Kaur Hanspal (as the Administrator of the Estate of Davinder Singh Hanspal Deceased) and Alcon Holdings Limited.
8. The Applicant, the 3<sup>rd</sup> and the 4<sup>th</sup> Respondents or such parties as the court may order be deemed and/or appointed as Directors of Alcon Holdings Ltd in the exceptional circumstances of this case and a Register of shareholders and Directors be opened and kept.
9. As an alternative to prayer 8 above, the Applicant be appointed as a Director of the 1<sup>st</sup> Respondent to run its affairs pending resolution of the shareholding dispute between the 3<sup>rd</sup> and 4<sup>th</sup> Respondent and/or confirmation Grants on shares each is entitled to.



10. Costs of this matter be settled by the 1st Respondent, Alcon Holdings Ltd or as the court may order.
2. The Application is premised on the grounds on its face, the supporting affidavit sworn by the Applicant, Vijay Hanspal, on 7<sup>th</sup> September, 2023 and a further affidavit sworn by the Applicant's counsel, Jared Omari Mituga, on 18<sup>th</sup> October, 2023.
3. Alcon Holdings Co. Ltd (the Company) was incorporated on 5<sup>th</sup> July, 1976, by the late Kultar Singh Hanspal (Kultar), Inderjit Singh Hanspal (Inderjit). Their brother Davinder Singh Hanspal (Davinder) later joined the Company, and as at the year 1993, Kultar held 334 shares, while Inderjit and Davinder each held 333 shares. The late Kultar, Inderjit, and Davinder died on 5<sup>th</sup> March, 2012; 11<sup>th</sup> September, 2014; and 25<sup>th</sup> October, 2017, respectively.
4. According to Davinder's personal representatives, Kultar transferred his 334 shares to Davinder. However, Kultar's personal representatives contend that Kultar did not transfer any shares. This dispute is the subject of litigation in Nairobi (Milimani Com & Tax Division) E032 of 2021 (previously JR No. 092 of 2021), Alka Roshanlal Hanspal v the Registrar of Companies, Vijay Hanspal (as Administrator of the Estate of Inderjit Hanspal Singh) and Jaspriya Kaur Hanspal Singh & Socha Kaur Hanspal (as the Administrator of the Estate of Davinder Singh Hanspal Deceased) and Alcon Holdings Limited.
5. As from 11<sup>th</sup> September, 2014 when Inderjit died, the Company lacked a quorum of two required directors as per Articles 11 and 13 of the Company's Articles of Association ("Articles"). As a result, since 25<sup>th</sup> October, 2017 when Davinder died, the Company has not had a member, director, company secretary or any officer to manage its affairs. Presently, there is no surviving director to register any transmission.
6. The Applicant, the late Inderjit's son, executor and beneficiary of his shares in the Company, claims that during this period of absence of members and directors, the 4<sup>th</sup> Respondent, the late Davinder's personal representatives, and other third parties have fraudulently diverted the Company's funds and assets. In particular, he alleges that they have withdrawn money from its accounts; leased its property; and diverted money for private use; used funds to pay advocates handling personal matters; and the company's prime asset being LR No. 12467 (Industrial Area Nairobi) valued at Kshs. 900,000,000/- in the year 2022 has been illegally sold, and there is likelihood of imminent loss of proceeds of its sale.
7. The third parties have contested the Applicant's allegations of their illegal acts on the ground that only the Company, through its officers, can challenge their acts.
8. The Court, in a ruling of 11<sup>th</sup> May, 2022, in a matter in which the Company was a party, held that only the Company can challenge the above allegations of misappropriation and fraud against it, even though, at the time, it had no surviving director or shareholder.
9. The Applicant contended that the Company's Articles do not provide a mechanism for the Applicant and the beneficiaries of the deceased shareholders/ directors to be deemed as members of the company and/or to elect directors of the company, in a situation where all shareholders and directors are deceased, such as the present situation.
10. The Applicant contended that although he has obtained a Grant of Probate, and is entitled to become a member and shareholder of the Company, the 2<sup>nd</sup> Respondent (the Registrar of Companies) has refused to effect this change in their records. He submitted that he is apprehensive that if the orders sought are not granted by the Court, the Company and other beneficiaries of deceased directors will continue to suffer loss and injustice.



11. In opposition to the Application, the 4<sup>th</sup> Respondent filed Grounds of Opposition dated 2<sup>nd</sup> October, 2023, based on the following grounds:-
1. The application is fatally defective as section 103 of the *Companies Act* No. 17 of 2015 does not grant powers to the court to appoint directors, even on interim basis. The appointment of directors is the preserve of shareholders. To that extent, the Registrar of Companies is wrong to have advised the Applicant to do so.
  2. In any event, the Applicant and the 4<sup>th</sup> Respondent can only become shareholders of the Company through transmission of shares in accordance with the *Law of Succession Act* after the demise of the Inderjit Singh Hanspal and Davinder Singh Hanspal, who were hitherto the directors and shareholders.
  3. Further, as admitted by the Applicant, the 3<sup>rd</sup> Respondent's claim to shareholding is disputed and until the dispute is resolved, she cannot participate in the affairs of the company even as an interim director.

### **Applicant's Submissions**

12. The Applicant urged the Court to appoint him and the 4<sup>th</sup> Respondent as the Company's interim directors on the basis that they have the undisputed shareholding of the late Inderjit and Davinder.
13. The Applicant submitted that under Section 103 of the *Companies Act* of 2015, the court has power to give an order for rectification of the register so that the deceased are substituted by their personal representatives as holders of the shares of a company. The Applicant relied on the High Court decision in *Suryakant B. Patel & 2 Others v Moses Sekeya Kulndi & 4 Others* and Registrar of Companies (Nairobi HC (Com & Tax) Misc. App No. 467 of 2014), where the Court allowed a similar application to rectify the Company Register to reflect the current shareholders and directors of the company.
14. The Applicant relied on the decision of the England and Wales High Court (Chancery Division) in *Kings Court Trust Limited & 2 Others v Lancashire Cleaning Services Ltd* (2017) EWHC 1094 (Ch), [2017] WLR (D) 348, where the Court held that it had inherent power to order rectification of the company register to have the executor registered as shareholders where Grant of Probate was yet to be issued.
15. The Applicant submitted that like in the *King's Court Trust* case [supra], in the present matter, there are exceptional circumstances, in so far as the Company's Articles do not provide a mechanism for appointment of directors in a situation where all the shareholders and directors have passed away. Article 97 of the Company's Articles which allows for appointment of a director in a general meeting, has been specifically excluded by Article 3. In addition, Article 10 of the Company's Articles provides that only Regulation 32 of Table "A" shall be omitted on transmission of shares. The Applicant relied on *Gower's Principles of Modern Company Law*, 4<sup>th</sup> Ed. Page 465 and the High Court decision in *Succession Cause No. 336 of 2020, In the Matter of the Estate of Lawrence Nginyo Kariuki* (2021) eKLR, for the above proposition.

### **4<sup>th</sup> Respondent's Submissions**

16. The 4<sup>th</sup> Respondent submitted that the Court is not bound by the *King's Court Trust* case [supra] because foreign jurisprudence is only persuasive. The 4<sup>th</sup> Respondent relied on the Supreme Court of Kenya's decision in *Jasbir Singh Rai & 3 others v Tarlochan Singh Rai Estate of & 4 others* [2013] eKLR, where the Court cautioned against mechanistic approaches to foreign precedent.



17. The 4<sup>th</sup> Respondent submitted that the present matter is distinguishable from the King's Court Trust case [supra] where the Grant of Probate was uncontested. In the present case, the Applicant and the 3<sup>rd</sup> Respondent have challenged the confirmation of the Grant of Probate to the 4<sup>th</sup> Respondent arising from a dispute regarding the alleged transfer of 334 shares, which dispute is pending before the Court in Nairobi (Milimani Comm. & Tax Division) E032 of 2021. The 4<sup>th</sup> Respondent contended that due to the contested 334 shares, there is neither legal basis for the 3<sup>rd</sup> Respondent's participation in the matter, nor appointment as an interim shareholder or director, since a decision is yet to be made.
18. The 4<sup>th</sup> Respondent relied on the High Court decision in Mbogo & another v Registrar of Companies; Roberty Njoka Muthara (Interested Party) (Civil Case E820 of 2020) [2021] eKLR to support the argument that the only way the Applicant, the 3<sup>rd</sup> and 4<sup>th</sup> Respondents can become directors, is after transmission of shares is complete in accordance with the *Law of Succession Act*, and that the Court has no mandate to appoint directors. The 4<sup>th</sup> Respondent therefore contended that the Registrar of Companies erred in advising the Applicant to make this application, arguing that if the court appoints the directors, even on a temporary basis, it will be bypassing the company structure.

### **Analysis and Determination**

19. I have considered the grounds set out on the face of the Application, the supporting and further affidavits, the 4<sup>th</sup> Respondent's grounds of opposition, and the rival submissions of the parties.
20. Section 103 of the *Companies Act* contains the general power of the court to order rectification of a register of members of a Company, it provides as follows:-

#### Power of the Court to Rectify Register

103. (1) If —
  - (a) the name of any person is, without sufficient cause, entered in or omitted from the register of members of a company; or
  - b. the cessation of membership of a person who has ceased to be a member of the company has not been entered in that register, the person affected, or the company or any member of the company, may apply to the Court for rectification of the register."

21. The Court's power to rectify a register of members is discretionary and must be exercised judiciously, not capriciously or whimsically. Since the procedure is a summary process, the power can only be invoked in the clearest of cases. The two essentials were highlighted in the High Court decision in *Suryakant B. Patel & 2 Others v Moses Sekeya Kulndi & 4 Others and Registrar of Companies (Nairobi HC (Com & Tax) Misc. App No. 467 of 2014)*, cited by the Applicant, in the following terms:-

- “(4) There is ample judicial authorities as well as respected literally works on the scope of jurisdiction and power of court in determining applications for rectification of register of members of a company. First, the jurisdiction to rectify register by court is discretionary albeit the discretion must always be exercised in accordance with the law; not whimsically; not capriciously. Therefore, the first consideration in the exercise of discretion under section 118 of the *Companies Act* is; the procedure is a summary process and should be invoked only in clearest of cases. See the case of *Prab Hualal Tejpa Haria &*



Another vs. Pravin Chandra Meghji Dodhia & 2 Others [2007] eKLR, where Warsarme J (as he then was) expressed himself that;

“In my view the summary powers of the court can be invoked in plain and clear cases, where there is no need for a trial..... The powers under section 118 of the company’s Act cannot be invoked when there is a real and complicated dispute as to the real interests of the parties.”

22. In the present case, the Applicant is the executor of the estate of the late Inderjit, who held 333 shares in the Company. He has obtained Grant of Probate and Certificate of Confirmation of Grant which was exhibited together with Inderjit’s death certificate and last will and testament. I am satisfied that he is entitled to the late Inderjit’s 333 shares in the Company. However, it is also evident that transmission of shares cannot take place at this point, given the circumstances as set out above.
23. As to the 4<sup>th</sup> Respondent, although their entitlement to the late Davinder’s 333 shares in the Company is undisputed, I note that the 4<sup>th</sup> Respondent claimed that both the Applicant and the 3<sup>rd</sup> Respondent have objected to confirmation of Grant of Probate to the 4<sup>th</sup> Respondent. I also note that there is a dispute in Court between the 3<sup>rd</sup> and 4<sup>th</sup> Respondent regarding 334 shares that were allegedly transferred by the late Kultar to the late Davinder. It is therefore evident, that the present matter is not one that may be described as the “clearest of cases”. In fact, quite the opposite, there is an ongoing dispute between the beneficiaries. Accordingly, I am persuaded that the present matter may be distinguished from the authorities relied on by the Applicant.
24. I have also considered the argument put forward by the 4<sup>th</sup> Respondent, that there is no legal basis for the 3<sup>rd</sup> Respondent’s participation in the matter, and I am persuaded it does have a real interest in the matter. Accordingly, the court ought to ensure that any decisions made should not prejudice the beneficiaries of the estate.
25. Finally, I am persuaded that rectification of the register in favour of the Applicant (at this point) would be a futile exercise. I say this because the Company would still be un-operational; with only a single member; and no directors; nothing will have changed. In the circumstances, the exercise of the court’s discretion in favour of the Applicant would not salvage the situation but may further fuel the ongoing dispute between the beneficiaries.
26. Based on the reasons set out above, I find that the Applicant has not met the threshold as set out above, to warrant the grant of orders, to rectify the register of members of the Company.
27. I now turn to the issue of appointment of directors by the Court. It is not disputed that after the demise of the three shareholders, there is no officer of the Company capable of acting on its behalf. The Applicant argued that the Company is directionless and open to misappropriation of its funds and assets. The Applicant also argued that only the Court can rectify the situation by ordering rectification of the register of directors. However, appointment of directors is the sole preserve of the members of a company. It is also well founded that the Court’s power to order rectification is limited to membership and not directorship.
28. This position was clearly captured in the High Court Decision in Thomas Bryson Kamau (Suing through his Attorney Calvin Karungo Njoroge) v Registrar of Companies (Misc. Civil Application No. 200 of 2020) [2021] eKLR, which I quote at length, and the same is self-explanatory:-

“18. The court notes that via their submissions, the Respondents vigorously argued that this court has no jurisdiction to rectify the register under the circumstances that the Applicant has sought. One of the facets of this



argument is that the court does not have the jurisdiction to rectify the company register with regard to directors, secretary and advocates and that section 118 is limited to rectification of the register of members. A literal reading into that section reveals that the court only has the jurisdiction to rectify the register of a company with regard to its members once an application is made by a party. A member of a company limited by shares in court's view is a shareholder. A shareholder is a person who buys and holds shares in a company having a share capital. They become a member once their name is entered on the register of members. However, it is of note that a directors and/or secretary can hold shares in the company, but the court is yet to be convinced that it can order rectification as to the said members as directors and/or secretaries, for reasons expounded below.

19. The court's finding is that, rectification is a remedy whereby a court orders a change in a written document to reflect what it ought to have said in the first place. However, this is limited to the membership of the company and it would appear not to extend to directors, advocates and company secretary who by every definition are not the members of the company, but are merely its agents. The court's view is that, such changes are the sole preserve of the company according to its Articles and Memorandum of Association. The said view is fortified by Halsbury's Laws of England, (4th Edn.), Vol. 7(1) paragraph 372 where the learned authors were quite categorical concerning the court's jurisdiction in rectification. The same can only apply to a company's share register. The learned authors note as follows;

“372. General jurisdiction to rectify company's register of members

The jurisdiction to rectify a company's register of members is discretionary; and it is not limited by the provisions of the *Companies Act* 2006. Thus the court will rectify the register, apart from that Act, to enable the members of a company to have a fair and reasonable exercise of their rights.

When the court entertains the application, it is bound to go into all the circumstances of the case, and to consider what equity the Applicant has to call for its interposition and the purpose for which relief is sought.

The power to rectify has been exercised where there has been misrepresentation in the prospectus; where it is expedient to have an order which will bind all the shareholders and effectually bar any subsequent application for restoration of a name struck out by the directors; where shares have been illegally allotted at a discount; where the application for shares has been made in the name of a person, as, for example, an underwriter, without his authority; where there is no valid allotment of shares; or the allotment is not made within a reasonable time, or is irregular; where a transfer of shares has been improperly registered or registration has been refused; where there are joint holders of shares who wish to divide the shares so held into two parts with their names entered in the register in respect of each part in a different order; where the company puts on its register matters which are not required by the statute; in order to set right allotments of shares which have been issued as fully paid without a proper contract being filed; and where an overseas company



was entered in the register without the permission of the Treasury, which was at the time required.” (emphasis mine)

29. Similarly, in the High Court decision in *Mbogo & another v Registrar of Companies; Roberty Njoka Muthara (Interested Party)* (Civil Case E820 of 2020) [2021] eKLR, cited by the 4<sup>th</sup> Respondent, the Court observed that:-

“ 6. It is worth noting the power of rectification is in respect of members which under section 3 of the *Companies Act* means, “Member of the Company”. The 1<sup>st</sup> Applicant and the persons, she purports to represent are not members of the company as they admit that the deceased shareholders’ shares have not been transmitted to them. They therefore do not have any right to be members of the Company or exercise the rights of members which include the right to elect directors in accordance with the Articles of Association. The appointment of directors is a preserve of the shareholders and since the Applicants and the persons they represent are not shareholders they cannot purport to appoint directors.

7. The Registrar of Companies was right to point out that the transmission of shares must be done before a meeting of the company is held to appoint directors. There is no authority for the court to bypass the company structure in this case. The parties must complete administration of the estates of the deceased shareholders in order to exercise the rights of shareholders.”

30. I am guided by the above law, and cognizant that the issues relating to misappropriation of company assets and funds are not properly before this court. Those issues were determined by a court of concurrent jurisdiction vide its ruling dated 11<sup>th</sup> May, 2022. Therefore, based on the reasons as set out above, I am not persuaded that this court ought to issue orders for rectification of the register of members at the present time. Accordingly, I find that the application dated 7<sup>th</sup> September, 2023, is without merit and the same is dismissed. This being a matter involving a family company, I make no orders as to costs.

**Dated and delivered virtually via Microsoft Teams this 30<sup>th</sup> day of November 2023**

**ALEEM VISRAM**

**JUDGE**

In the presence of;

..... For the Applicant  
..... For the 1<sup>st</sup> Respondent  
..... For the 2<sup>nd</sup> Respondent  
..... For the 3<sup>rd</sup> Respondent  
..... For the 4<sup>th</sup> Respondent

