



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

MISC. CIVIL APPLICATION NO. 200 OF 2020

IN THE MATTER OF: RECTIFICATION OF THE COMPANY REGISTER OF UK VEHICLES EXPORTS LTD

THOMAS BRYSON KAMAU (Suing

through his Attorney CALVIN KARUNGO NJOROGE.....APPLICANT

-VERSUS-

REGISTRAR OF COMPANIES.....RESPONDENT

RULING

1.The Applicant moved the court vide a **Notice of Motion** application dated **16th December, 2020** pursuant to the provisions of **Section 103** of the **Companies Act, No. 17 of 2015** and **Order 51 Rule 1** of the **Civil Procedure Rules 2010**. The substantive prayer sought in that application by the Applicant is for an order directing the Respondent to rectify the Register of **M/S UK Vehicle Exports Limited** by removing the name of **Thomas Bryson Kamau** from the Register forthwith.

2.The application is premised on grounds on its face and the **Supporting Affidavit** of **Calvin Karungo Njoro** sworn on **15th December, 2020**. The summary of the Applicant's case is that his name was entered in the subject Company as a result of misrepresentation or illegally since he has never subscribed to the Company's Memorandum of Association to signify his wish to form the Company or agreeing to be a member thereof. As is averred, he also did not consent to Directorship in the Company and at the worst, he does not know the other named members of the Company. Therefore, the continued existence of his name on the Company's Register is prejudicial to him since the acts of the Directors are binding to the subject Company and the Applicant may as well be bound in terms of Company's liabilities. Secondly, the Applicant avers that he resides in the UK and hence not privy to the interests and operations of this Company. The court is therefore sought to intervene and direct the deleting of the Applicant's name from the Company's Register in line with **Section 103** of the **Company's Act**.

3.In his submissions filed on **28th May, 2021**, the applicant submitted that the court has unlimited civil jurisdiction under **Article 165(1)(3)** (a) of the **Constitution**, and is empowered to rectify the Register upon being show sufficient cause. He has also relied on the case of **Suryakant Bhailalbhai Patel & 2 Others –vs- Moses Sekenya Kulundu & 4 Others [2014] eKLR**, where the court stated that the power of rectification is discretionary and should be exercised on the clearest of cases. The case of **Clement Muturi Kigano –vs- Kibera Development Company Limited [2019] eKLR**, was also relied on and here the court observed thus;

“ The next largest category is cases where the applicant is already on the register but wishes to be removed, e.g. because the registration was effected as a result of misrepresentation (Re Scottish and Universal Bank Ltd, Ship's Case (1865) 2 DJ&S 544) or was effected without authority (Martin's Case (1865) 2 H&M 669) or was illegal because exchange control permission was not obtained (Re Transatlantic Life Assurance Co. Ltd [1980] 1 WLR 79) or bonus shares were improperly issued (Re Cleveland Trust plc [1991] BCC 33).”

4.The Respondent on the other hand, has never filed a single pleading in this case despite **M/S Rukiya** appearing on behalf of the Respondent on the **19th April, 2021** and requesting for 14 days to file a response. The request was granted but up to the time of writing this Ruling, no response had been filed and neither did the Respondents' counsel show up in court when the matter was listed for hearing.

Analysis and Determination

5.I have considered the application, the affidavit in its support and the annexures attached thereto. I find the only issue for determination being *whether the court can grant the orders sought and order the Registrar of Companies to rectify the Register by deleting the name of the Respondent from the membership/directorship of M/S UK Vehicle Exports Limited.*

6. From the pleadings, the Applicant avers that he has never subscribed to the Memorandum of Association or the Articles of Association of **M/S UK Vehicle Exports Limited** yet his name appears at the Company Register as a Shareholder and Director of **M/S UK Vehicle Export Ltd** holding 200 ordinary shares. He also laments that he does not know the other persons named as Shareholders and/or Directors of the Company. He believes that his name ended up in the Register as a result of misrepresentation or in some illegal manner.

7. I have considered the provisions of **Section 103(1)** of the **Companies Act 2015** which provides as follows:-

“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

(c) be a member of the Company has not been entered, the person affected, or the Company or any member of the Company may apply to the Court rectification of the register.

(2) On hearing an application made under subsection (1), the Court shall either refuse the application or order rectification of the register and payment by the Company of any damages sustained by any party affected by the error or is failure.

(3) On hearing such an application, the Court may-

(a) decide any question relating to the title of a person who is a party to the application to have the person's name entered in or omitted from the register, whether the question arises between members or alleged members, or between members or alleged members on the one hand and the Company on the other hand; and

(b) Generally decide any question that it considers should be decided in order to rectify the register.

(4) In the case of a Company required by this Act to lodge a list of its members with the Registrar, the Court, when making an order for rectification of the register, shall by its order direct notice of the rectification to be given to the Registrar, who shall on receipt of the notice make such adjustments to the Register as the Registrar considers appropriate.”

8. In view of the above provision, this court can order the rectification of the Company Register when the name of the Applicant is entered in or omitted from the Register of Members of a Company without any sufficient cause. In this case the averments by the Applicant have not been rebutted and it is not denied that the name of the Applicant was entered in the Company Register on grounds of misrepresentation or on an unjust cause.

9. However, I am of the view that the subject Company, **M/S UK Vehicle Exports Limited** should have been made a party or served with the pleadings in the present suit for them to canvass their view on the same. I therefore direct the Applicant to do so within the next 21 days before a confirmation on the order for rectification can issue.

10. For Clarity, the following orders do and hereby issue;

a) An order is hereby issued directing the applicant to serve the pleadings in this suit to M/S UK Vehicle Exports Limited through its address as reflected on the Company's CR-12 annexed in the application.

b) An order do and is hereby issued directing M/S UK Vehicle Exports Limited to lodge an updated list of its members with the Registrar taking in account the Applicant's concerns upon being served with pleadings in this case within 21 days thereof.

c) Failure to comply with order (b) above, an order do issue directing the Registrar of Companies to rectify the register of M/S UK Vehicle Exports Limited by removing the name of THOMAS BRYSON KAMAU from the Register.

d) Each party shall bear its own costs.

It is hereby so ordered.

SIGNED, DATED AND DELIVERED VIRTUALLY AT MOMBASA THIS 24TH DAY OF SEPTEMBER, 2021.

D. O. CHEPKWONY

JUDGE

In the presence of:

Mr. Muriithi counsel for Applicant

No appearance for Respondent

Court Assistant - Winny