



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**JUDICIAL REVIEW 26 OF 2019**

**DAVIS KINYANJUI NJENGA.....APPLICANT**

**VERSUS**

**REGISTRAR OF COMPANIES.....RESPONDENT**

**AND**

**MONICA WANGUI NJENGA .....INTERESTED PARTY**

**EX-PARTE**

**DAVID KINYANJUI NJENGA .....SUBJECT**

**RULING**

1. Before me is a Notice of Motion dated 11<sup>th</sup> November 2019 and filed on even date by Davis Kinyanjui Njenga, it is brought under **Order 53 rule 3 of the Civil Procedure Rules** pursuant to leave granted on 5<sup>th</sup> November 2019. It seeks orders:

*1. That the court grants an order of certiorari to bring into this court for purposes of quashing the decision of the respondent of reducing the applicant's shares in a private company known as Njemoni Limited from 321 to 21. The decision was communicated on 16<sup>th</sup> October 2019.*

*2. That the costs of the application be borne by the respondent.*

2. The application is premised on the grounds on the face of the application.

*1. THAT the respondent is a statutory body established under section 831 of the Companies Act. The scope of the respondent's jurisdiction is defined under the said section.*

*2. THAT the applicant is the holder of majority shares in a company known as Njemoni Limited. The company is a private company limited by shares. The manner of sale, transfer is defined under the memorandum and articles of association which established the said company. In a nutshell, before an allocation or sale of shares is effected by the respondent, the directors of the company must pass a resolution to that effect. The resolution together with the returns indicating the allocation of shares are filed with respondent and paid for. Once the returns are filed the respondent effects the allocation of the shares.*

*3. THAT as all times, the applicant held 321 shares in the said company. This situation was reflected in the record held by the respondent and the same was accessible by way of a search at the E-citizen platform. Further the allocation of shares to the shareholder was supported by previous returns and minutes of the said company.*

*4. THAT on or around 22<sup>nd</sup> August, 2019, the respondent, acting outside his power under the Companies Act, reduced the shares held by the applicant from 321 to 21. In transferring the shares, no resolution was made by the directors of the company and no returns were filed with him.*

*5. THAT the conduct of the respondent is ultra vires his powers under the Companies Act and more specifically Section 831 thereof. This court has supervisory jurisdiction over statutory bodies over acts done in execution of their statutory powers. In this case the respondent acted beyond its statutory powers.*

6. THAT further, the shares held by the applicant are property within the meaning of the Constitution. Before the applicant's right to property can be interfered with, he ought to be given a right to be heard.

3. He also relies on his affidavit sworn on 4<sup>th</sup> November 2019 where he depones inter alia that:

2. THAT the interested party and I, are shareholders in the company known as Njemoni Limited. The company is a private company limited by shares. It has its memorandum and articles of association and all decisions are made through meetings and resolutions. Annexed hereto is a copy of the memorandum and articles of association marked DKN1.

3. THAT at the point of incorporation the said company had two shareholders. The structure of shareholding was as follows:

a. JAMES NJENGA MATHU ----- 1 SHARE

b. MONICA WANGUI NJENGA ---- 1 SHARE

4. THAT in 1992 one of the shareholders, JAMES NJENGA MATHU, sold his one share to me. The sale of the share was minuted and the appropriate returns were filed at the offices of the Registrar of Companies, the proposed respondent herein. Annexed hereto is a copy of the records marked DKN2.

5. THAT on the same year, the company passed a resolution to allocate 49 shares to the two directors/shareholders. Out of the 49 shares 20 were allocated to me while 29 were allocated to the interested party. The company filed the appropriate returns at the companies' registry and the change of the shareholding was effected. Annexed hereto is a copy of the returns marked DKN3.

6. THAT on 4<sup>th</sup> January 2004 during a meeting of the company, it was resolved that the shares of the company, be increased from 100 shares to 500 shares. The reason for the increase was to allow an allocation of shares to me cover a debt of Kshs. 3,000,000/= that I had paid on behalf of the company. Annexed hereto are copies of the minutes marked DKN4.

7. THAT the resolution and notice of increase of nominal capital was filed at the registry of companies and the shares were increased from 100 shares to 500 shares.

8. THAT on 25<sup>th</sup> May 2004, I was allocated 300 shares. The allocation was by way of purchase and the consideration was Kshs. 3,000,000/= that I paid on behalf of the company. Annexed hereto are copies of statement of increase of nominal capital, special resolution filed at the companies registry, notice of increase of shares and return of allotment all marked as exhibit DKN5 (a), (b), (c), (d).

9. THAT after the aforesaid allocation and as at 22<sup>nd</sup> August 2018, the structure of the shareholding was as follows:-

a. Davis Kinyanjui Njenga ---- 321 shares

b. Monicah Wangui Njenga----- 30 shares

Annexed hereto is a copy of the records from the registrar of companies marked DKN6.

10. THAT on or around 22<sup>nd</sup> October 2019, the registrar of companies, the proposed respondent herein reduced my shareholding from 321 to 21, the reduction of the shareholding was not supported by any resolution of the company and no returns had been filed with the registrar of companies to support the share reduction. Annexed hereto is a copy of the records from the registrar after the share reduction marked DKN7.

11. THAT the registrar of companies acted outside his jurisdiction for the following reasons:-

c. Njemoni Limited is a private company limited by shares. The decisions of the companies relating to the allocation of shares are made either on annual general meeting or a special general meeting.

d. The registrar of companies, the respondent herein is the custodian of records of all companies in the Republic of Kenya, the scope of this jurisdiction is defined under Section 831 of the Companies Act.

e. For the registrar of companies to change the structure of the shareholding of a private company limited by shares, the directors/shareholders of the company must forward resolution to her together with returns for that purpose specifying the new structure of shareholding.

f. Even if the registrar of companies was suspicious of non payment for the returns, the issue ought to be raised with the directors of the companies, in any event, the structure of the shareholding cannot be changed without giving the directors and/or the affected shareholders a right to be heard.

12. THAT the decision of the respondent is ultra vires her powers under the Companies Act.

13. THAT further and without prejudice to the foregoing, the decision by the respondent was one which affected my right to property. Before such a decision is made, the law requires that I be granted a right to be heard. Before the reduction of the shares, the respondent never gave me a right to be heard.

14. THAT I raised the issue with the registrar through a letter which was written to Vivian Kinyanjui Advocate. The advocate was informed that it was an anomaly which was occasioned by misplacement of the receipt. Annexed hereto is a copy of the letter by the said advocate marked DKN 8.

15. THAT to remedy the situation the advocate forwarded copies of all the receipts of the increase of shares and allotment together with the returns that had been filed by the company. Annexed hereto are copies of the returns for 2004 and the receipts for the returns marked DKN9 (a), (b), (c), (d).

4. The Respondent, Registrar of Companies responded through the affidavit sworn on 13<sup>th</sup> January 2020. She depones *inter alia* that this court had no jurisdiction to hear and determine this matter as it was entirely a “commercial dispute for the control of the heart and soul of Njemoni Company Limited” which falls within the ambit of the **Companies Act** and whose jurisdiction lies in the Commercial and Admiralty Division of the High Court. That this Judicial Review was a disguised appeal against the respondent’s exercise of its discretion, and the other appropriate forum would be a **merit review** as a judicial review concerned itself only with the decision making process.

8. THAT from our records Njemoni Limited – C.48269, the company in which the shareholding of the ex-parte applicant and the interested party is in dispute, was incorporated on December 11<sup>th</sup> 1991 with a nominal capital of Kshs. 10,000/= divided into 100 shares of Kshs. 100/= each and with the following persons listed as its Director Shareholders:

a) James Mathu – 1 share

b) Monica Njenga – 1 share

9. THAT from our records, sometime in April 1992, there was a transfer of 1 share from Njenga Mathu to Davis Kinyanjui and a subsequent allotment by the company of a total of 49 shares to the following persons:

a) Monica Njenga - 29 shares

b) Davis Kinyanjui – 20 shares

Thus the company’s shareholding as at that date was as follows:

a) Monica Njenga – 30 shares

b) Davis Kinyanjui – 21 shares

(Annexed hereto and marked JK 1 (a) & (b) are copies of the share transfer deed and the Form 213 – Return of allotment).

10. THAT in July 2018 in the company lodged an application reference number ABX8HBEAA vide the Respondent’s semi electron file audit and verification system to manage the company register called link Business, using the e-citizen account of Davis Kinyanjui Njenga wherein he sought to have himself and the interested party linked as users to be added.

11. THAT during this file audit and verification the respondent as parts of its duties is tasked with looking through and considering all relevant documentation within the company files such as memorandum, and articles, particulars of directors and secretary, notice of residential address, certificate of incorporation, statement of capital and all returns if any to ensure that they are in order.

12. THAT this file audit and verification on Njemoni Limited was completed on 22<sup>nd</sup> August 2018 with the records showing following as the director shareholders.

a) Monica Njenga – 30 shares

b) Davis Kinyanjui – 21 shares

13. THAT David Kinyanjui Njenga on behalf of Njemoni Limited, on 16<sup>th</sup> October 2019, lodged an application for a change in particulars in the company reference number CR-861PAZG for the allotment of 300 shares to himself pursuant to a meeting allegedly held on 16<sup>th</sup> October 2019 at the company’s boardroom with both Monica Njenga Kinyanjui and Davis Njenga Kinyanjui being indicated as the members present. (Annexed hereto and marked JK 3(a) & (b) is a copy of the CR20- Return of Allotment form and a copy of the minutes of the meeting held on 16<sup>th</sup> October 2019).

14. THAT office of the respondent in conducting its due diligence in the proceedings in the change of particulars application proceeded to contact Monica Njenga Wangui, a director shareholder in the company to verify the veracity of the transaction, who stated that she was unaware of the said allotment of 300 shares despite her name being listed and

being present in the said meeting held to effect the disputed allotment and as such the respondent could not proceed the said application. (Annexed hereto and marked JK4 is a copy of the corrections sent by the respondent to the client on 16<sup>th</sup> October 2019 on application reference number - CR-861PAZG).

15. THAT on 18<sup>th</sup> October 2019 the firm of Kinyanjui Advocates & Commercial Conveyancer Limited wrote to the respondent on behalf of its client Njemoni Limited, seeking a correction on the company's shareholding informing and seeking to have the shareholding structure of the company rectified to reflect 300 shares that they alleged had been allotted to David Kinyanjui. (Annexed hereto and marked JK5 is a copy of the letter and a copy of the allotment letter).

16. THAT Monica Wangui Njenga the interested party, before the respondent could act in the letter from the firm of Vivian Kinyanjui Advocates wrote to the respondent on 22<sup>nd</sup> October 2019 stating that she was a stranger to the allotment of 300 shares to David Kinyanjui Njenga as the same was done irregularly thus further sought to have the registrar ensure that the records at the company's registry will reflect the true status of the company which was as per the letter and annexed affidavit sworn by the interested party, was as follows:-

a) Monica Njenga – 30 shares

b) Davis Kinyanjui – 21 shares

(Annexed hereto and marked JK6(a) & (b) is a copy of the letter and annexed affidavit of Monica Wangui Njenga).

17. THAT from the foregoing it is evident that there is a dispute between the ex parte applicant and the interested party over the company's shareholding especially with regards to the allotment of the 300 shares in Njemoni Limited to Davis Kinyanjui Njenga.

18. THAT the respondent normally on receipt of such complaints have power to do inquiries and undertake hearings in a bid to reconcile the dispute. However, before the respondent could undertake any administration action to reconcile the issues, this present application was made.

19. THAT I verily believe that the office of the respondent has in no way changed the structure of the company but in the course of undertaking her statutory mandate became aware of disputed allotment of 300 shares to Davis Kinyanjui Njenga.

Annexed to the affidavit are documents sent to the respondent by the interested party pursuant to the respondent inquiry and interested party's response of 22<sup>nd</sup> October 2019.

5. Also annexed to the respondent's affidavit was the interested party's affidavit sworn on 22<sup>nd</sup> October 2019.

2. THAT Dandora Millers Limited is owned by myself (150 shares), my husband the late Njenga Mathu (150 shares), my late son George Mathu Njenga (100 shares) and my son David Kinyanjui Njenga (100 shares).

3. THAT Njemoni Limited was incorporated by myself and my husband the late Njenga Mathu.

4. THAT later, we allotted David Kinyanjui some 21 shares in NJEMONI LIMITED.

5. THAT at some point, my son DAVID KINYANJUI NJENGA had allotted himself some shares in the two companies without my knowledge AS FOLLOWS:-

a) 3000 shares in DANDORA MILLERS LIMITED

b) 300 shares in NJEMONI LIMITED

6) THAT to my best knowledge, the said allotment of shares to DAVID KINYANJUI NJENGA was done irregularly.

7) THAT I make this affidavit to confirm the foregoing and to ask the registrar of companies to regularize the position to reflect the true status which is that DAVID KINYANJUI NJENGA's shares are:

a) 100 shares in DANDORA MILLERS LIMITED

b) 21 shares in NJEMONI LIMITED

6. The subject filed a supplementary affidavit sworn on 23<sup>rd</sup> January 2020. On the issue of jurisdiction, he deponed that that there was no commercial dispute between the subject and the respondent; the issue here was the respondent's jurisdiction under the **Companies Act**, and whether it had the power to "change or take away my shares and allocate it to a stranger without the company's resolution". He denied making the application referenced to in paragraph 10 of the respondent affidavit. That the respondent records showed that as at 22<sup>nd</sup> August 2018 the shareholding of the company was at 30 shares for interested party and 321 shares for the subject. That David Kinyanjui Njenga was a complete stranger to himself and to Njemoni Limited. To this end he depones;

8. **THAT the respondent has stated that there was an application dated 16<sup>th</sup> October 2019 seeking change of particulars of the company. The application was allegedly lodged by DAVID KINYANJUI NJENGA and it was pursuant to a meeting held on 16<sup>th</sup> October 2019 that the shareholding was altered. The alleged application was neither filed by me or the interested party. It was created by the respondent in an attempt to steal shares that I own. The following factors support the position:-**

- a) *The respondent has confirmed at paragraph 14 that it called the interested party who confirmed that there was never a meeting where the directors resolved to alter the shareholding of the company.*
- b) *The allocation of shares was last done on 25<sup>th</sup> May 2004. The appropriate returns were filed and paid for. The shareholding henceforth was 321 shares in my favour and 30 shares for the respondent.*
- c) *it was not necessary to hold a meeting to change the shareholding of the company and retain it in the same manner as it was before.*

9. **THAT the respondent changed my shareholding from 321 shares to 21 shares the law firm of Vivian Kinyanjui advocates and commercial conveyancers wrote to the respondent requiring it to correct the shares to the original position. Instead of reverting the records to the original position, it allocated 21 shares to David Kinyanjui Njenga and 30 shares to Monica Njenga. The company known as Njemoni Limited has two shareholders. I (Davis Kinyanjui Njenga) and Monica Njenga. David Njenga Kinyanjui is a stranger to the company.**

10. **THAT the dispute herein relates to the allocation of 321 shares to DAVID KINYANJUI NJENGA by the respondent without a resolution of the company and without the filing of returns. Further the allocation of the shares and the change of the documents by the respondent were done outside the power of the respondent under the Companies Act.**

11. **THAT the respondent cannot allocate shares illegally then purport to resolve an imagined dispute. At paragraph 18 the respondent has admitted that what it was involved in was an administrative action. The said action was clearly outside its mandate.**

12. **THAT the respondent has stated that it never changed the structure of the shareholding of the company but it was exercising its mandate when it became aware of the illegal allocation of the shares to me. That position is grossly pretentious. The respondent's jurisdiction is defined under the Companies Act. Under that Act. It has not been empowered to change the shareholding whether there is a dispute or not.**

13. **THAT further, what the respondent did was to change the allocation of shares which was done on 25<sup>th</sup> May 2004 and where I was allocated 300 shares. They have substituted the decision made then with their decision giving one DAVID NJENGA KINYANJUI 321 shares.**

14. **THAT in an application of this nature the respondent ought to demonstrate that it has the jurisdiction under the Companies Act to take shares from a shareholder/director and allocate the same to a stranger.**

7. Parties agreed to file written submissions. For the interested party submissions were filed on 12<sup>th</sup> February 2020 by Ashitiva Advocates LLP for the ex-parte applicant on 23<sup>rd</sup> January 2020 by Githui & Companies Advocates none were filed by the Office of the Attorney General for the respondent.

8. The only dispute in the facts, as between the interested party and the ex-parte applicant is whether there was at any one time a resolution by Njemoni Limited to increase the amount of nominal shares from 49 to 500 and to allocate the applicant 300 shares.

#### **Ex-parte applicant submissions**

9. After laying out the facts the ex-parte applicant submits that on 4<sup>th</sup> January 2004, the directors passed a resolution to increase the company's share capital. The shares were increased to 500 and he was allocated 300 on the basis that he had loaned the company Kshs. 3 million. He relied on the minutes annexed to his affidavit and the resolution of 25<sup>th</sup> May 2004. That as at 22<sup>nd</sup> October 2018 shareholding was 321 shares, David Kinyanjui Njenga and 30 shares interested party.

10. He set out what he gathered to have been the decisional process of the respondent in arriving at the impugned decision as follows:-

v *The respondent received a copy of application for change of particulars of the company from DAVID NJENGA KINYANJUI dated 16<sup>th</sup> October 2019.*

v *The application was accompanied by copy of minutes for a meeting held on 16<sup>th</sup> October 2019.*

v *The respondent called the interested party who denied being a party to the meeting held on 16<sup>th</sup> October 2019.*

v *The interested party wrote a letter indicating that she was a stranger to the allocation of the shares to DAVID KINYANJUI NJENGA.*

v *The respondent changed the shareholdings at the instance of the interested party to reflect 30 shares in her favour and 21 shares*

*in favour of the applicant.*

11. He relied on **Article 165(6) of the Constitution**, submitting that the court is empowered to interfere with the decision of a statutory body where the decision is tainted with illegality, procedural impropriety and breach of the rules of natural justice.

12. He relied on **section 831, 834, 844 of the Companies Act** on the appointment, functions of the Registrar of Companies. That these provisions of the law did not grant the Registrar any powers to interfere with the allotment of shares which he submitted was for the company as per **Sections 327 to 333 of the Same Act**. On what amounts to ultra vires, illegality I was referred to;

i) Administrative Law by Sir William Wade

ii) **Republic vs Public Procurement Administrative Review Board & 2 Others [2019] eKLR.**

iii) **Anisminic Limited vs Foreign Compensation Commission & Another. [1969]2 A.C. 147; [1969]2 WLR 163; 113 S.J. 55; [1969] 1 ALL ER 208**

iv) **Republic vs Inspector General of Police, David Kimaiyo ex-parte Akitch Okola [2014] eKLR.**

### **Interested Party's Submissions**

13. Four issues were set out for consideration by the interested party:

***I. Whether the applicant has established any grounds to warrant the court to grant the judicial review orders sought.***

***II. Whether the resolutions passed on 4<sup>th</sup> January and 25<sup>th</sup> May, 2004 were genuine.***

***III. Whether the registrar acted ultra vires; and***

***IV. Which party should bear the cost of the application?***

14. It was argued on the interested party's behalf that the applicant had not demonstrated that respondent had exceeded its powers when it sought to establish the veracity of the transaction. That respondent established there was a dispute in the allotment as the interested party was not aware of any meeting where a resolution was made to that effect, that the action taken by the respondent had not been shown to be illegal or *ultra vires*, and the alteration made could not be said to have been a **decision** capable of being quashed.

15. It is also argued that the applicant had not established by way of factual evidence that there were indeed resolutions passed on 4<sup>th</sup> January 2004 and 25<sup>th</sup> May 2004. That the ex-parte applicant had not established that indeed he had advanced the company Kshs. 3,000,000/= loan, the reason upon which he grounds his claim that the shares increased to 500, and 300 allocated to him. That it was his evidential burden as per **Section 107 (1) as read with Section 109 and 112 of the Evidence Act**. I was referred to **Anne Wambui Ndiritu v Joseph Kiprono Ropkoi & Another [2004] eKLR.**

It was also pointed out that documents filed for the alleged changes of 25<sup>th</sup> May 2004 bore the company serial number C. 49267 yet that for Njemoni Limited is 49269. I was referred to **R vs Public Procurement Administrative Review Board & 2 Others ex parte Rongo University [2018] eKLR.**

16. The office of the Registrar of Companies is established under **Section 831 of the Companies Act**. **Section 844** provides the Registrar with the power to correct documents in certain cases. It states;

***“A document that is lodged with the Registrar for registration may be corrected by the Registrar if it appears to the Registrar to be incomplete or internally inconsistent.” (Emphasis mine)***

The power to correct may be exercised only if the Registrar has made an inquiry, and in response to that inquiry has received instructions to make those corrections. The Registrar must also be satisfied that the instructions come from a person authorized to give those instructions by the person who delivered the document or by the company to which the document relates. The company may also give consent to instructions to be given to the Registrar under **Section 844**.

17. There is no contest that the Registrar acted under these provisions in arriving at the impugned 'decision'.

18. From the authorities cited for me;

***“Judicial Review is about the decision making process... whether that decision or action is unauthorized or invalid... the manner in which the decision is made that [its] merits or otherwise” R vs Public Procurement Administrative Review Board & 2 Others ex parte Rongo University [2018] eKLR.***

That there is a

**“...three fold classification of grounds of Judicial Review any one of which would render and administrative decision and or action ultra vires... illegality, irrationality and procedural impropriety. Later judicial decisions have added a fourth ground... proportionally... illegality... the decision maker must understand correctly the law that regulates his decision making and must give effect to it... irrationally...unreasonableness... procedural impropriety... procedural standards to which administrative decision makers must in certain circumstances adhere” Republic vs Public Procurement Administrative Review Board & 2 Others [2019] eKLR citing Lord Diplock in Council of Civil Service Unions v Minister of Civil Service.**

19. Further the words of Lord Reid in Anisimic Limited vs Foreign Compensation Commission & Another.

***It has sometimes been said that it is only where a tribunal acts without jurisdiction that its decision is a nullity. But in such cases the word “jurisdiction” has been used in a very wide sense, and I have come to the conclusion that it is better not to use the term except in a narrow and original sense of the tribunal being entitled to enter on the inquiry, it had done or failed to do something in the course of the inquiry which is of such a nature that its decision is a nullity. It may have given its decision in bad faith. It may have made a decision which it had no power to make. It may have failed in the course of the inquiry to comply with the requirements of natural justice. It may in perfect good faith have misconstrued the provisions giving it power to act so that it failed to deal with the question remitted to it and decided some question which was not remitted to it. It may have refused to take into account something which it was required to take into account. Or it may have based its decision on some matter which, under the provisions setting it up, it had no right to take into account. I do not intend this list to be exhaustive. But if it decides a question remitted to it for decision without committing any of these errors it is as much entitled to decide that question wrongly as it is to decide it rightly. (emphasis mine)***

Guided by these authorities the first issue I must determine because it has been raised by the respondent raised the issue in its affidavit in response to the application is **whether this court has jurisdiction to deal with the issue at hand?** The respondent raised the issue but did not proceed to demonstrate how this court lacks jurisdiction. The mere statement that this is a commercial dispute does not remove it from the jurisdiction of this court. In any event the applicant response set the record straight. Applicant has no dispute over the company with the respondent. The applicant’s issue is what the action the respondent took about his shares in Njemoni Limited. That is the issue at hand and that is within the jurisdiction of this court to handle. I have considered the totality of the application before me and the main issue in my view is whether the respondent’s action of correcting the shareholding records was within its powers. The issue of control over the company is not an issue before me for determination. Hence it is my determination that this court is empowered to deal with the issue before me.

20. **Did the respondent act ultra vires?** The response must come out of provisions of **Section 844** vis a vis the facts as presented to this court. The applicant has disowned the person named as *David Njenga Kinyanjui* to be a total stranger to Njemoni Limited. His has put out his name as DAVIS KINYANJUI NJENGA. His own annexures – DKN “Minutes of the Board of Directors of Njemoni Ltd held on 4<sup>th</sup> January 2004 at Nakuru” state that the person who attended the meeting where the resolution to increase the nominal share capital to 500 was “MR DAVID KINYANJUI NJENGA” by his own affidavit, this is not him, which raises doubt as to whether the alleged meeting took place. The interested party depones that she was not aware of such a meeting. There is also no attached minute of the Resolution alleged to have been passed on 25<sup>th</sup> May 2004. It is also noteworthy that statement of increase of nominal capital is filed in Company Number C. 49267 allegedly on a resolution of the company dated 25<sup>th</sup> May 2004 but that resolution is not annexed. The document he relied on DKN6 as extract of records, dated 22<sup>nd</sup> August 2018 related to one David Kinyanjui Njenga as being the holder of 321 shares and similarly the one dated 16<sup>th</sup> October 2019 also indicates that one David Kinyanjui Njenga is the holder of 21 shares.

21. The documents placed before me indicate that there was a document **Return of Allotment** dated 16<sup>th</sup> October 2019 by the applicant. There were also minutes of a meeting said to have been held on 16<sup>th</sup> October 2019. Among directors present was “*David Njenga Kinyanjui*”.

22. It is in the back drop of these documents that the Registrar acting under **Section 844 (3)** made an inquiry to the other director and shareholder, the interested party.

23. The Interested Party responded to the effect that the said allocation of 300 shares was in dispute as she was only aware of the allocations that were made in 1992. The respondent noted from its records that up to 22<sup>nd</sup> August 2018 the records reflected the allocations that were made in 1992 where the applicant held 21 shares and the Interested Party 30 shares.

24. The respondent acting on the instructions by the interested party and verifying the same from its own records was satisfied that that was the true position of the matter and proceeded to correct the record in terms of the shareholding as it existed before the disputed documents came into the picture.

25. As far as I can see from the provisions of **Section 844** the Registrar acted within his or her powers, and followed the procedure that it laid down under **Section 844(3) of the Act**, all this is in compliance with **Section 844(1)**. The documents post the 1992 allocation of shares are on their face, “*incomplete and internally inconsistent*” Here are documents, filed that are inconsistent with the record, that are unsupported by the requisite documentation, that require reconciling, the respondent followed the law to the letter and did what was required of his or her.

26. Did the Respondent violate the rules of Natural Justice? was the applicant prejudiced unheard? The facts before are that the Respondent acted within the law. The applicant was not denied the right to be heard by the respondent. He has the window to avail the appropriate documents to ‘correct the record’.

27. Did the respondent act in bad faith? The applicant’s position is that the respondent created an application he never made to steal his shares and allocate them to a stranger to the company without the company resolutions. There is nothing before me to show that the personal representative of the respondent benefitted in any way from the correction of the record, or had any personal issues with the applicant. Once again, any mistakes made in the ‘correction of the record’ may be corrected with the availing of the proper documents to the respondent.

28. I find resonance with my views in Republic vs Public Procurement Administrative Review Board & 2 Others [2019] eKLR the judge stated;

*“Certiorari” issues to quash a decision that is ultra vires... The Court has to weigh one thing against another to see whether or not the remedy is most efficacious in the circumstances obtaining. The discretion of the court being a judicial one must be exercised on the basis of evidence and sound judicial principles.*

29. The evidence before me suggests that there is an underlying dispute between Davis Kinyanjui Njenga and his mother Monica Wangui Njenga over shareholding in two (2) companies. That is not a dispute that can be settled through a Judicial Review. The issue he brings before this court is an off shoot of that unsettled dispute and the actions of the Registrar were directed by the provisions of the law.

30. The Registrar did not allot any shares to anyone. The Registrar acted to correct the record according to available authenticated records. That correction stands of the footing of **Section 844 of the Companies Act**. The applicant has a similar window to provide the proper documents to the Registrar, under the same section of the law to have the record corrected.

31. If indeed the applicant has undisputable documents to support his claim, nothing stopped him from presenting the same to the same registrar for correction of the record. As matters stand now I find no illegality, irrationality or procedural impropriety on the part of the respondent.

32. This application is therefore not merited and is dismissed with costs to the respondent and the interested party.

**Delivered, Dated and Signed at Nakuru 23<sup>rd</sup> day of April, 2020.**

**Mumbua T. Matheka**

**Judge**

In the presence of:-

Via email by consent of

1. Githui & Company Advocates
2. Ashitiva Advocates LLP
3. Attorney General

Edna Court Assistant