



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW DIVISION

JR MISC APPLICATION NO. 86 OF 2013

MICHAEL MUNGAI.....APPLICANT

(Proprietor of Purple Educational Centre & a Director of Purple Centre Limited both in the Registration Stage)

VERSUS

REGISTRAR OF COMPANIES.....1ST RESPONDENT

THE ATTORNEY GENERAL.....2ND RESPONDENT

JUDGEMENT

1. By an amended Notice of Motion dated 8th March 2013, the applicant herein is seeking orders that the Court orders the Respondents herein, the Attorney General and the Registrar of Companies to register **Purple Educational Centre** and **Purple Centre Limited** and issue the applicant with the necessary certificates of registration.
2. The Motion is based on the fact that the applicant notified the Registrar of Companies that he was using the said names and requested registration thereof. According to the applicant he confirmed that the said names were available and suitable for registration and paid the requisite fees. According to the applicant the respondents have however not registered the said companies based on unreasonable demands one of which has been that the applicant changes the names which the applicant has done three times. According to the applicant the said action is unfair.
3. The applicant has exhibited copies of the documents in support of his application as well as correspondences received from the Registrar of Companies which clearly indicate that the names requested by the applicant were duly reserved. The said Registrar however advised the applicant to consider changing the names of his intended companies and obtain a confirmation of no objection from the Ministry of Education.
4. Despite being served with the application the respondents did not respond to the application.
5. Article 47(1) of the Constitution provides:

(1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.

(2) If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.

6. It is clear that the applicant's rights under the foregoing Article have been infringed upon. The applicant was entitled to have his application expeditiously, efficiently, lawfully, reasonably and fairly considered.
7. The Court of Appeal in **Kenya National Examinations Council vs. Republic Ex parte Geoffrey Gathenji Njoroge & Others Civil Appeal No. 266 of 1996 (CAK) [1997] eKLR** expressed itself as follows on this point:

“The order of *mandamus* is of a most extensive remedial nature, and is, in form, a command issuing from the High Court of Justice, directed to any person, corporation or inferior tribunal, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. Its purpose is to remedy the defects of justice and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right or no specific legal remedy for enforcing that right; and it may issue in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual. The order must command no more than the party against whom the application is legally bound to perform. Where a general duty is imposed, a *mandamus* cannot require it to be done at once. Where a statute, which imposes a duty, leaves discretion as to the mode of performing the duty in the hands of the party on whom the obligation is laid, a *mandamus* cannot command the duty in question to be carried out in a specific way..... These principles mean that an order of *mandamus* compel the performance of a public duty which is imposed on a person or body of persons by a statute and where that person or body of persons has failed to perform the duty to the detriment of a party who has a legal right to expect the duty to be performed. An order of *mandamus* compels the performance of a duty imposed by statute where the person or body on whom the duty is imposed fails or refuses to perform the same but if the complaint is that the duty has been wrongfully performed i.e. that the duty has not been performed according to the law, then *mandamus* is wrong remedy to apply for because, like an order of prohibition, an order of *mandamus* cannot quash what has already been done.”

8. The decision whether or not to register a company is an exercise of discretion on the part of the Registrar of Companies. However, the exercise of such discretion must be exercised legally and where the respondent is shown to have abused its discretion the Court will interfere. In so interfering the Court will however not be justified in compelling the respondent to exercise its discretion in a particular manner.
9. It follows that this Court is not entitled to compel the respondents to register the applicant's companies. However the Court can properly compel the respondents to consider the applicant's application in accordance with the law and where the respondents in considering the said application takes into account extraneous matters or fails to take into account relevant ones the court may quash such a decision.
10. Accordingly the order that commends itself to me is that an order of *mandamus* is hereby issued compelling the Registrar of Companies to consider the applicant's subject applications and report to the Court within 30 days.
11. The costs of this application are awarded to the applicant to be borne by the 1st respondent.

Dated at Nairobi this 16th day of August 2013

G V ODUNGA

JUDGE

Delivered in the presence of Mr Mungai, the Petitioner, Miss Cheruiyot for the 2nd respondent and Mr Ndirangu for the 1st respondent