



**Misgina v Registrar of Companies (Originating Summons E364 of 2024)
[2025] KEHC 2427 (KLR) (Commercial and Tax) (7 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 2427 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
ORIGINATING SUMMONS E364 OF 2024**

RC RUTTO, J

MARCH 7, 2025

BETWEEN

DEJEN TEMELSO MISGINA PLAINTIFF

AND

REGISTRAR OF COMPANIES DEFENDANT

JUDGMENT

1. The Plaintiff has by an Originating Summons dated 8th July 2024 invoked the provisions of Article 159 of *the Constitution*, Sections 128 (1), 129 (1) and 130 of the *Companies Act*, Sections 1A, 1B and 3A of the *Civil Procedure Act* and Order 37, Rule 1 (g) of the Civil Procedure Rules. The Summons seeks the following prayers:

1. ... Spent
2. That this Honourable Court be pleased to grant an order for appointment of Mr. Temelso Dejen Misgina and Mr. Temelso Emmanuel Mesgina as directors in the company;
3. That this Honourable Court be pleased to grant an order directing the Registrar of companies to effect the appointment of Mr. Temelso Dejen Misgina and Mr. Temelso Emmanuel Mesgina as directors in the company;
4. That the costs of this application be in the cause.

2. The application is anchored on the grounds on its face and the supporting affidavit of the Plaintiff. According to the Plaintiff, he is the administrator of the estate of Misgina Temelso Brahne (the deceased person). He relied on the Letters of Administration of Grant issued on 22nd August 2022, marked TDM1, and confirmed on 20th March 2023, marked TDM2. Amongst the assets held in the deceased's estate is Zete Enterprises Limited, whose Certificate of Incorporation was produced and



- marked as TDM3. He added that together with his brother Temelso Emmanuel Mesgina, they are the beneficiaries of the company.
3. The Plaintiff averred that during the process of distribution and transmission of shares of the deceased's estate, he experienced difficulties in the appointment of directors of Zete Enterprises Limited. Consequently, the Plaintiff applied for rectification of grant to include the names of the directors of the company. That application was granted on 1st November 2023. The rectified grant was produced and marked TDM4. However, the plaintiff still experienced challenges in the appointment of the intended directors.⁴ He informed the Court that he was advised to obtain a court order in order for the defendant to implement the appointment of new directors in Zete Enterprises Limited. He further urged this Court to allow the summons to pave way for transmission of shares since the Business Registration System (BRS) requires the company to be linked to a director. That this will further pave way for the sale of properties owned by the company. He lamented that for instance, an Agreement for Sale dated 7th December 2023, produced and marked TDM5, was in jeopardy as the completion date had passed.
 4. In spite of proper service of the pleadings, the Defendant did not file its response. During the hearing of the Summons, the parties relied on their respective written submissions. The Plaintiff's submissions dated 10th October 2024 argued that the Originating Summons was premised on the advice from the Defendant requesting him to obtain a court order before those changes could be effected. He prayed that the Originating Summons be allowed. The Defendant filed written submissions dated 4th November 2024. It chronologized the background of the company praying that the Originating Summons be allowed on account of the rising cases of fraudulent applications in its office.
 5. I wish to emphasize that submissions cannot replace pleadings. They serve as persuasive arguments aimed at influencing the court's decision in favour of or against a party. Unfortunately, the respondent chose not to file any formal response and instead attempted to present its case solely through submissions. In their submission they urge that they required a court order to enforce a grant. What then is a grant? If a grant has been presented, does it not constitute a court order? Clearly, the respondent actions and submissions demonstrate either an attempt to obstruct their own processes or a lack of understanding of its mandate, coupled with indecisiveness in the execution of its roles. It is unclear why the Registrar of Companies would require a court order to effect a change when the law explicitly outlines the necessary requirements. This reflects a failure to properly execute their mandate and amounts to an abuse of the court process, which this court cannot condone. Consequently, I will not consider the defendant's submissions.
 6. I have considered the Originating Summons, the affidavit in support, together with the annexures thereto, examined the Plaintiff's submissions and analyzed the law. The Plaintiff seeks an order for the appointment of Temelso Dejen Misgina (the plaintiff himself) and Mr. Temelso Emmanuel Mesgina as directors in Zete Enterprises Limited and a further order compelling the Defendant to effect that appointment.
 7. I have looked at the provisions of the *Companies Act* and the *Civil Procedure Act* and the Rules thereunder; more particularly, sections 128 (1), 129 (1) and 130 of the *Companies Act*, sections 1A, 1B and 3A of the *Civil Procedure Act* and order 37, rule 1 (g) of the Civil Procedure Rules. None of the provisions therein speak to this court's powers to grant the Plaintiff the orders sought. In fact, I find that the orders sought herein invite this Court to sit as the Defendant and usurp its powers. I do not see why the Plaintiff was directed to obtain orders that have no providence for the exercise of jurisdiction by this Court.



8. Section 500 of the *Companies Act* provides that a document of transfer of the share or other interest of a deceased member of a company can be made by the administrator or executor of the estate and is as effective as if the administrator or executor had been such a member at the time of execution of the document. Further, section 501 of the *Companies Act* provides that, if a document produced to a company is by law sufficient evidence of the grant of letters of administration, of the estate of a deceased person; or confirmation as executor of a deceased person, the company is obliged to accept the document as sufficient evidence of the grant and that a company that refuses to comply with such evidence is liable to pay damages to any person who sustains loss in consequence of the refusal.
9. In light of this provision, I do not see the difficulty in the implementation of the certificate of grant confirmed on 20th March 2023 and rectified on 1st November 2023 when the veracity of the confirmed grant has not been challenged by the Defendant. I therefore fail to comprehend why the Defendant had to send the plaintiff to this court to obtain orders for registration of the new directors when such prerogatives are a reserve of the Defendant’s mandate.
10. Before this Court, is a Defendant with a clear legal mandate, explicitly outlined in law, along with the procedures for exercising it. However, instead of fulfilling this duty, the Defendant chooses to abdicate responsibility, instead of engaging in the legal process of verifying whether the individual’s seeking directorship meet the necessary qualifications, the Defendants opts for a short cut. In effect, he attempts to shift responsibility, hiding behind the excuse of “the court ordered it, so I did it.” Fundamentally, compelling orders are never intended for a party that is fully aware of its duty but deliberately avoids it, but also ‘colludes’ so as to be told what to do! The Court struggles to reconcile with the Defendant stance advising the Plaintiff to “obtain a court order and I will effect the appointment of the directors”. The power to effect these appointments is vested solely in the Defendant by statute making such an approach inappropriate.
11. Further, the Defendant has several avenues available for addressing any issues that may arise from such a procedure. I must therefore reiterate that it was regrettable for the Defendant, who has failed to fulfil its mandate to compel the plaintiff to seek court orders that are not legally recognized. This matter should have been pursued by the Defendant through the appropriate channels rather than being brought before this Court. Consequently, I find that the Originating Summons lacks merit. However, since the Defendant’s actions forced the Plaintiff to seek legal course, I order that the Defendant bear the costs of this suit in favor of the Plaintiff.
12. Orders Accordingly.

DATED AND SIGNED AT MACHAKOS THIS 7TH DAY OF MARCH, 2025.

RHODA RUTTO

JUDGE

Delivered on the virtual platform, Teams this 7th day of March, 2025.

In the presence of;

.....For Applicant

.....For Respondent

.....Court Assistant

