



Republic v Business Registration Service; Rexe Roofing Products Limited & 3 others (Exparte Applicants); Dhauka (Interested Party) (Miscellaneous Application 716 of 2021) [2025] KEHC 2995 (KLR) (Commercial and Tax) (14 March 2025) (Ruling)

Neutral citation: [2025] KEHC 2995 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION 716 OF 2021**

**BM MUSYOKI, J
MARCH 14, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

BUSINESS REGISTRATION SERVICE RESPONDENT

AND

REXE ROOFING PRODUCTS LIMITED EXPARTE APPLICANT

IRENE WANJIKU MAINA EXPARTE APPLICANT

DIONYSIOUS KIIHIKA KIAMBI EXPARTE APPLICANT

CHARITY NYAGUTHII KIIHIKA EXPARTE APPLICANT

AND

AUSTIN NYONGESA DHAUKA INTERESTED PARTY

RULING

1. It is unfortunate that this application was brought under certificate of urgency on 28-07-2021 yet almost four years down the line, the application which is in normal circumstances expected to be ex parte, is still being litigated. This court does not know where to place the blame for the delay but this is one of the many cases which unnecessarily remain in court shelves for unreasonable period.
2. In the chamber summons dated 27th July 2021, the ex parte applicants prayed for the following orders;



1. This application be certified urgent and heard ex-parte on priority basis in view of its urgent nature and service of the same be dispensed with in the first instance.
 2. Pending hearing and determination of this application, this Honourable Court be pleased to stay the decision of the respondent dated 19th April 2021 purporting to reverse the changes effected by the company on 25th July 2015 and all subsequent changes on directorship and shareholding of the 1st applicant.
 3. Pending hearing and determination of this application, this Honourable Court be pleased to grant orders directing the respondent to rectify its records to reflect the position of the 1st applicant as was obtaining prior to the decision of 19th April 2021.
 4. Pending hearing and determination of this application, this Honourable Court be pleased to grant orders restraining the respondent from making further changes to the structure of the 1st applicant based on the complaints made by the interested party.
 5. The applicants be granted leave to apply for an order of certiorari to bring to this court the decision of the respondent dated 19th April 2021 for quashing.
 6. The applicants be granted leave to apply for orders of mandamus to compel the respondent to rectify the records it maintains for the 1st applicant and reinstate 21,666 shares taken away from the 2nd applicant, reinstate the 9,667 taken away from the 3rd applicant, reinstate the 4th applicant as a director of the company and reinstate 10,000 shares taken away from her and expunge the interested party from the records of the 1st applicant.
 7. The applicants be granted leave to apply for an order of prohibition to prohibit the respondent from making any alterations to the 1st applicant's records without according fair hearing to the 2nd, 3rd and 4th applicants.
 8. The grant of leave to apply for an order of certiorari, mandamus and prohibition aforesaid do operate as a stay of the decision made by the respondent on 19th April 2021 and to prohibit any other changes affecting the structure of the 1st applicant arising from the complaint raised by the interested party.
 9. The court gives any other orders it deems just and equitable.
 10. The costs of this application be borne by the respondent and the interested party.
3. The application is supported by affidavit of Irene Wanjiku Maina sworn on 27th July 2021 and statement of facts dated the same date. The application had been filed in the judicial review division but was transferred to this division by an order made by Justice Jairus Ngaah on 28-07-2021. When the matter came for hearing before Honourable Justice W. Okwany on 16-11-2021, she granted prayers 2, 3 and 4 of the application. What remains for determination are prayers 5 to 10 which basically pray for leave to file for judicial review orders and a stay of the respondent's decision dated 19th April 2021.
 4. The 2nd applicant's supporting affidavit states that the respondent took a unilateral action of reversing resolution of the 1st applicant's board of directors made on 25th July 2015 pertaining the directorship, shareholding and general structure of the company. The applicants claim that this was done without giving the applicants an opportunity to be heard contrary to Article 47 of *the Constitution*. The action of reversal is said to have had effect of reducing the share capital of the 1st applicant, removing directors and shareholders of the company and adding new directors and shareholders thus interfering with the operations of the company including existing loan facilities, overdrafts, contracts with third parties



and generally crippling the 1st applicant. The deponent goes on to give history of the formation of the company and the events leading to removal of the interested party as a shareholder and director. It is the registration of the resolution removing the interested party that the respondent reversed on 19th April 2021 which action precipitated this application.

5. Although the applicant and the interested party make reference to the respondent's replying affidavit dated 17th October 2022, I have not been able to see such an affidavit in the court's physical file or the case tracking system. Similarly, I have not traced the respondent's submissions. The applicant's supplementary affidavit dated 17th January 2023 suggest that the respondent had stated in its replying affidavit which I have not traced, that it wrote to the company secretary of the 1st applicant which letters did not elicit any responses.
6. I have not seen any replying affidavit by the interested party but there is a supplementary affidavit dated 12th May 2022 which is hardly legible. The interested party claims that the minutes and documents presented to the respondent for the change of directorship were forged and denies ever signing the same. He claims further that the reversal of the changes was made after the applicants failed to respond to letters written by the respondent.
7. The applicants have taken position that the interested party voluntarily resigned from the 1st applicant while the interested party disputes that by stating that the minutes, documents and papers which were used to effect his removal were forgeries. The applicants insist that the said documents and papers were genuine. The parties have in their submissions made allegations and counter allegations on the manner the changes and reversals were made. The court is not at this stage expected to go into the merits of the matter. All that it is required to do is to look into the issues raised and ascertain whether there is a prima facie case established and if so, grant the application.
8. I have read the chamber summons and several affidavits filed by the parties together with annexures thereto, statement of facts and parties' submissions. The averments and submissions of the parties may be their words against each other but the fact that the respondent's action complained of was taken without the applicants having been heard, raises an arguable point which needs substantive consideration which cannot exhaustively be dealt with in the current application. It needs to be heard in the main notice of motion and for this reason, I am minded to grant the application in the following terms.
 1. Leave is granted to the applicants to apply for;
 - a. Order of certiorari to bring to this court the decision of the respondent dated 19th April 2021 for quashing.
 - b. Orders of mandamus to compel the respondent to rectify the records it maintains for the 1st applicant and reinstate 21,666 shares taken away from the 2nd applicant, reinstate the 9,667 taken away from the 3rd applicant, reinstate the 4th applicant as a director of the company and reinstate 10,000 shares taken away from her and expunge the interested party from the records of the 1st applicant.
 - c. An order of prohibition to prohibit the respondent from making any alterations to the 1st applicant's records without according fair hearing to the 2nd, 3rd and 4th applicants.
 2. The leave granted above shall operate as a stay of the decision made by the respondent on 19th April 2021 and consequently the respondent is prohibited from making any other changes affecting the structure of the 1st applicant arising from the complaint raised by the interested party.



3. The substantiative notice of motion shall be filed within twenty one (21) days from the date of this ruling failure to which the order of stay shall lapse.
4. Costs of this application shall be in the cause.

DATED SIGNED AND DELIVERED AT NAIROBI THIS 14TH DAY OF MARCH 2025.

B.M. MUSYOKI

JUDGE OF THE HIGH COURT.

Judgment delivered in presence of Mr. Mwenda for the applicant and Mr. Musundi for the interested party and in absence of the respondent.

