



REPUBLIC OF KENYA



**Sabljak v Business Registration Service (Miscellaneous Application E124 of 2018)
[2025] KEHC 3559 (KLR) (Commercial and Tax) (20 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3559 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E124 OF 2018**

F GIKONYO, J

MARCH 20, 2025

BETWEEN

PREDRAG SABLJAK APPLICANT

AND

BUSINESS REGISTRATION SERVICE RESPONDENT

Companies Act lacks express provisions for situations where all shareholders are deceased or cannot be traced.

The ruling addressed an application for rectification of a company's share register where all original shareholders were deceased or untraceable. The applicant, as the sole beneficiary and administrator of the deceased shareholders' estates, sought to register share transfers, including shares from a previously unregistered inter-vivos transfer. The court, noting the lack of express statutory provisions for such peculiar circumstances, affirmed its inherent power to order rectification. It held that resealed grants of representation, coupled with proof of beneficiary status, constituted sufficient grounds. The ruling underscored the court's role in ensuring legal hygiene and completeness of corporate records, particularly when a company's assets were at risk due to an inactive register.

Reported by John Ribia

Company Law – shares – share transfers – where the shareholders were deceased – procedure - whether the High Court possessed the inherent or statutory power to order the rectification of a company's register of members in circumstances where all existing shareholders were deceased or untraceable, and where the Companies Act did not provide express provisions for such peculiar situations - whether the High Court's discretionary power to rectify a company register extended to compelling the registration of share transfers by transmission through multiple layers of deceased beneficiaries and personal representatives, particularly when previous transfers were not formally recorded by the company - whether the production of a grant of representation, coupled with proof of the applicant's status as the sole beneficiary of the deceased shareholder, constituted sufficient and lawful grounds for a court to order the rectification of a company's register of members – Companies Act (Cap 486) sections 103 500 to 503; Companies General Regulations, 2015 (Cap 486 Sub Leg) regulations 64, 80, 81, and 83.



***Law of Evidence** – resealed grants - sufficiency of resealed grants as evidence for establishing entitlement to shares and facilitating transmission through deceased estates for company register rectification - whether a resealed grant of representation, whether foreign or domestic, constituted sufficient legal evidence to establish the entitlement of an administrator to shares in a company, thereby facilitating the transmission of shares through multiple deceased estates for the purpose of rectifying the company's register of members.*

Brief facts

The application sought the rectification of the company register for Dusan Construction Limited, a family company incorporated in 1978, to reflect the transfer of shares to the applicant, Predrag Sabljak. The company's original shareholders, Isak, Branka, and Dusan Cupurdija (deceased), had relocated from Kenya, with Isak and Branka's current whereabouts unknown for 25 years after moving to the USA in 2000.

In 2007, Isak and Branka had assigned their shares to the applicant's mother, Verica Cupurdija, through a Quitclaim Bill of Sale, but the transfer was never registered in Kenya. Dusan Cupurdija, the applicant's father, passed away in 2005, and his widow, Verica, was appointed administrator of his estate, with her foreign grant later resealed in Kenya in 2021. However, Verica died in 2022 before her shares could be registered. The applicant subsequently became the administrator of Verica's estate in 2022, with his grant also resealed in Kenya in 2024, confirming his entitlement as the sole beneficiary of both Dusan and Verica's estates.

The company faced the unique challenge of having no active officer or shareholder to facilitate official changes with the Registrar of Companies, rendering internal rectification impossible. The predicament was compounded by the Companies Act lacking express provisions for situations where all shareholders were deceased or could not be traced. The urgency of the matter was heightened by the alleged invasion of the company's land, which could not be protected without the company being legally active. The Business Registration Service, the respondent, did not oppose the application for rectification.

Issues

- i. Whether the High Court possessed the inherent or statutory power to order the rectification of a company's register of members in circumstances where all existing shareholders were deceased or untraceable, and where the Companies Act did not provide express provisions for such peculiar situations.
- ii. Whether the High Court's discretionary power to rectify a company register extended to compelling the registration of share transfers by transmission through multiple layers of deceased beneficiaries and personal representatives, particularly when previous transfers were not formally recorded by the company.
- iii. Whether a resealed grant of representation, whether foreign or domestic, constituted sufficient legal evidence to establish the entitlement of an administrator to shares in a company, thereby facilitating the transmission of shares through multiple deceased estates for the purpose of rectifying the company's register of members.
- iv. Whether the production of a grant of representation, coupled with proof of the applicant's status as the sole beneficiary of the deceased shareholder, constituted sufficient and lawful grounds for a court to order the rectification of a company's register of members.

Held

1. The Companies Act and its regulations had no express provisions for dealing with a case where all the shareholders of a company were deceased or could not be found. Hence, recourse to the court for rectification of the register by order of the court.
2. The High Court had power under section 103 of the Companies Act to give an order for rectification of the register so that the personal representatives were registered by transmission in place of the deceased shareholder of a company.
3. The resealed grant issued to the late Verica in P & A E1654 of 2021 had been exhibited which, by law was sufficient evidence of the grant of representation made to Verica, the administrator of the estate



- of the deceased person, Dusan Cupurdija- a shareholder of the company. The resealed foreign grant in P & A Cause No. E191 of 2024 by law was sufficient evidence of the grant of representation made to the applicant as the administrator of the estate of the deceased person- Verica, the administrator of the estate of Dusan Cupurdija, a shareholder in the company.
4. The company as well as the court was obliged to accept the documents as sufficient evidence of the grant. The applicant was also the only son and beneficiary of the deceased. That was a sufficient and lawful ground to order rectification of the register of members of the company under section 501 of the Companies Act.
 5. The applicant also exhibited a copy of the Quitclaim Bill of Sale (Transfer of Shares) to show that Isak and Branka transferred their shares to the late Verica on March 11, 2007. He further exhibited a copy of the resealed grant issued to the late Verica in P & A E1654 of 2021. The deed of transfer had not been contested, and was taken to form part of her estate.
 6. Ordinarily, the company received and certified documents of transfer of shares and as appropriate, registered the member and issued a certificate of shares on the transfer under Section 502 of the Companies Act. A company which violated that duty was liable for criminal offence under section 503(4) of the Companies Act. The actions did not require an order of the court. The transfer of shares by deed was best handled by the company once it had a shareholder and director.
 7. The unique circumstances of the case necessitated a court order as the transferee of the shares was deceased, bringing into operation, the succession laws and the duty to register by transmission in respect to shares which were the subject of the deed of transfer of shares made in favour of the deceased.
 8. The circumstances of the case were peculiar. Procedural and legal hygiene as well as the completeness of record, required the register to reflect the legal events or incidents on the registration by transmission of Verica Cupurdija as the personal representative of Dusan Cupurdija and as the shareholder; and the applicant as the personal representative of the estate of Verica, getting the shares of Dusan.
 9. The company contended to own land which had been invaded by a third party and it could not protect the land without activating the company. The order for rectification of company register was to be applied lawfully.

The application dated January 23, 2025 was granted and the register of the company was to be duly rectified in accordance with the ruling.

Citations

Cases

Kenya

Patel, Suryakant B & 2 others v Moses Sekeya Kulndi & 4 others Miscellaneous Civil Application 467 of 2014; [2014] KEHC 1317 (KLR) - (Explained)

Statutes

Kenya

1. Civil Procedure Act (cap 21) section 3A - (Interpreted)
2. Civil Procedure Rules, 2010 (cap 21 Sub Leg) order 50 rule 1 - (Interpreted)
3. Companies Act (cap 486) section 103, 500 - 503 - (Interpreted)
4. Companies General Regulations, 2015 (cap 486 Sub Leg) regulation 64, 80, 81, 83 - (Interpreted)

Advocates

Ms Akola for respondent



RULING

Rectification of company register.

1. The notice of motion dated January 23, 2025, seeks rectification of register by the Registrar of Companies. Specifically, authorization to update records of Dusan Construction Limited, C 17854 by the respondent through the Registrar of Companies to reflect the transfer of 2550, 2200 and 250 Ordinary Shares from Isak, Dusan (Deceased) and Branka respectively to the applicant, Predrag Sabljak
2. The motion is premised on the grounds set out in the motion and the supporting affidavit sworn by the applicant on January 23, 2025.
3. The applicant averred that Dusan Construction Limited is a family company that was incorporated in Kenya on July 6, 1978 to deal with construction work. The three shareholders, Isak, Branka and Dusan (Deceased) lived in Kenya in 1978 but later relocated. Isak and Branka moved to the United States of America in 2000 and their current residence is unknown and has been for the past 25 years.
4. The applicant also averred that on March 11, 2007, Isak and Branka assigned their shares in the company to his mother, Verica Cupurdija through a Quitclaim Bill of Sale (Transfer of Shares) executed in California, before a Notary Public. The two shareholders have not been interested in the company after they signed the transfer. However, the transfer of shares was not registered in Kenya.
5. The applicant further deposed that the late Dusan Cupurdija (his father and Isak's brother) moved to Serbia in 2007. He died on March 31, 2005 in the Republic of Montenegro. His widow, Verica was appointed administrator after his demise and a grant was issued to her on December 1, 2005. She then applied for the resealing of the foreign grant via Probate & Administration Cause No E1654 of 2021 and the court resealed the grant. Before she could be registered as a shareholder in the company, she died in January 2022 at Zagreb in Croatia.
6. The applicant stated that he applied for grant and he was appointed as the administrator of the late Verica on April 21, 2022. He thereafter applied for resealing of the grant and the court resealed the grant on September 17, 2024.
7. The applicant indicated that he is the only beneficiary of the estate of the late Dusan and Verica and he is entitled to the 2200 shares owned and 2800 shares assigned.
8. Dusan Construction Limited has no officer or shareholder to transact any proceed under the Companies Act and it is impossible for the Registrar of Companies to effect changes.
9. The company owns Land Reference No 209/14475 in Kenya which has allegedly been invaded by a third party and it cannot protect the land without activating the company.
10. The Companies Act and its regulations have no express provisions of dealing with a case where all the shareholders are deceased or cannot be found. Hence, the only way forward is for the court to make the orders sought.

Hearing.

11. During the hearing of the matter on March 3, 2025, Ms Akinyi appeared for the applicant while Ms Akoth appeared for the Business Registration Service. Ms Akoth confirmed that the respondent was served with the application. She indicated that the respondent does not oppose the application. Both counsels confirmed that there were no objections from other beneficiaries.



Analysis and Determination.

12. I have considered the application and the grounds. The issue for determination is whether the register of members of the company in issue should be rectified.
13. The problem has been stated; that the *Companies Act* and its regulations have no express provisions for dealing with a case where all the shareholders of a company are deceased or cannot be found. Hence, recourse to the court for rectification of register by order of the court.

The context.

14. The application is anchored on sections 500, 501, 502 and 503 of the *Companies Act*, regulations 64, 80, 81 and 83 of the *Companies General Regulations*, section 3A of the *Civil Procedure Act* and order 50 rule 1 of the *Civil Procedure Rules*.
15. The court has power to give an order for rectification of the register so that the personal representatives is registered by transmission in place of the deceased shareholder of a company.
16. Section 103 of the *Companies Act* provides that: -

“ 103. Power of court to rectify register

- (1) 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 be a member of the company has not been entered in that register, the person affected, or the company or any member of the company, may apply to the court for 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.”



17. In *Suryakant B Patel & 2 others v Moses Sekeya Kulndi & 4 others and Registrar of Companies* (Nairobi HC (Com & Tax) Misc App No 467 of 2014), the court observed that:-

“(4) There is ample judicial authorities as well as respected literally works on the scope of jurisdiction and power of court in determining applications for rectification of register of members of a company. First, the jurisdiction to rectify register by court is discretionary albeit the discretion must always be exercised in accordance with the law; not whimsically; not capriciously. Therefore, the first consideration in the exercise of discretion under section 118 of the *Companies Act* is; the procedure is a summary process and should be invoked only in clearest of cases. See the case of *Prab Hulal Tejpa Haria & another v Pravin Chandra Meghji Dodhia & 2 others* [2007] eKLR, where Warsarme J (as he then was) expressed himself that;

“In my view the summary powers of the court can be invoked in plain and clear cases, where there is no need for a trial..... The powers under section 118 of the company’s Act cannot be invoked when there is a real and complicated dispute as to the real interests of the parties.”

18. In the instant matter, the applicant has deposed that he is the only son and beneficiary of estates of the late Dusan and Verica. He has been appointed as the administrator of the estate of the late Verica and applied for resealing of the foreign grant in P & A Cause No E191 of 2024. He exhibited a copy of the resealed grant. He also exhibited the CR12 showing the list of shareholders and directors of the company as of April 14, 2021.
19. The resealed grant issued to the late Verica in P & A E1654 of 2021 has been exhibited which, by law is sufficient evidence of the grant of representation made to Verica, the administrator of the estate of the deceased person, Dusan Cupurdija- a shareholder of the company herein.
20. The applicant also exhibited the resealed foreign grant in P & A Cause No E191 of 2024 which, by law is sufficient evidence of the grant of representation made to the applicant as the administrator of the estate of the deceased person- Verica, the administrator of the estate of Dusan Cupurdija, a shareholder in the company.
21. The company as well as the court is obliged to accept these documents as sufficient evidence of the grant. The applicant is also the only son and beneficiary of the deceased. S.501 of the *Companies Act*.
22. This is a sufficient and lawful ground to order rectification of the register of members of the company.
23. The applicant also exhibited a copy of the Quitclaim Bill of Sale (Transfer of Shares) to show that Isak and Branka transferred their shares to the late Verica on March 11, 2007. He further exhibited a copy of the resealed grant issued to the late Verica in P & A E1654 of 2021. The deed of transfer has not been contested, and is taken to form part of her estate.
24. But, I should state in passing that, ordinarily, the company receives and certifies documents of transfer of shares and as appropriate, registers the member and issues a certificate of shares on the transfer. S 502 of the *Companies Act*. A company which violates this duty is liable for criminal offence. S 503(4) of the *Companies Act*. These actions do not require an order of the court. The transfer of shares by deed is best handled by the company once it has a shareholder and director.



25. However, this case has unique circumstances. The transferee of the shares is deceased, bringing into operation, the succession laws and the duty to register by transmission in respect to shares subject of the deed of transfer of shares made in favour of the deceased.
26. Ms Akoth confirmed that the respondent was served with the application. She indicated that the respondent does not oppose the application. Both counsels confirmed that there were no objections from other beneficiaries.
27. The circumstances of this case are peculiar. Procedural and legal hygiene as well as the completeness of record, require the register to reflect the legal events or incidents on the registration by transmission of Verica Cupurdija as the personal representative of Dusan Cupurdija and as the shareholder thereof; and the applicant as the personal representative of the estate of Verica, getting the shares of Dusan.
28. I do note the applicant stated that the company owns Land Reference No. 209/14475 in Kenya which has been invaded by a third party and it cannot protect the land without activating the company.
29. I hope this order for rectification of company register is applied lawfully.
30. Accordingly, the application dated January 23, 2025 is granted and the register of the company to be duly rectified in accordance with this ruling.

DATED, SIGNED AND DELIVERED THROUGH MICROSOFT TEAMS ONLINE APPLICATION THIS 20TH DAY OF MARCH, 2025.

F. GIKONYO M

JUDGE

In the presence of: -

Ms. Akinyi for Kuloba for Applicant

Ms Akola for Respondent

CA - Kinyua

