



Republic v Business Registration Service & 2 others; Kimeu (Exparte Applicant) (Judicial Review Application E202 of 2024) [2025] KEHC 5711 (KLR) (Judicial Review) (6 May 2025) (Ruling)

Neutral citation: [2025] KEHC 5711 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
JUDICIAL REVIEW APPLICATION E202 OF 2024**

RE ABURILI, J

MAY 6, 2025

BETWEEN

REPUBLIC APPLICANT

AND

BUSINESS REGISTRATION SERVICE 1ST RESPONDENT

THE REGISTRAR OF COMPANIES 2ND RESPONDENT

THE ATTORNEY GENERAL 3RD RESPONDENT

AND

PAUL MASILA KIMEU EXPARTE APPLICANT

RULING

1. Pursuant to leave to apply granted on 12th September, 2024, the exparte applicant herein Paul Masila Kimeu filed Notice of motion dated 20th September, 2024 seeking judicial review orders of certiorari to bring into this court and quash the 1st respondent’s directions to Syokimau Farm Limited dated 25th April, 2024 and prohibiting the respondents from reviving Syokimau Farm Limited (In Liquidation) which is alleged to be under liquidation and enforcing the said directions to Syokimau farm Limited.
2. According to the ex parte applicant, the subject company Syokimau Farm Limited was voluntarily liquidated after its shareholders passed a special resolution to wind up the company on 26th June, 2013 under section 271 (1) of the repealed Companies Act, which resolution was advertised in the Kenya Gazette No. 11485 of 2013.
3. That upon such winding up, the applicant was appointed as liquidator of the company and he assumed all the powers with respect to the management of the company and that the provisions of section



- 734 (2) of the *Insolvency Act* validates the appointment of the applicant as the liquidator of the said company.
4. The applicant's complaint against the respondents is that vide directions dated 25th April 2024, the 1st respondent Registrar notified the said liquidated company through its purported directors implying that the appointment of the applicant as a liquidator was illegal; that the company should appoint a company secretary; the company should hold an annual general meeting; that the said company still had in place a Board of Directors; and that the company should seek the services of the IEBC to supervise the Company's elections.
 5. It is claimed that the said directions are ultra vires because the 1st respondent was created two years after authority of the members was given to the applicant to manage the company which had been voluntarily wound up.
 6. That the winding up process having begun, despite the repeal of the Act under which the winding up was initiated, the process would continue under the new Act of 2015. That the directions were issued to a company which was non-existent as the gazettment of the winding up had not been revoked.
 7. The application is supported by the affidavit sworn by the applicant and the statutory statement. The applicant also annexed copies of the impugned directions and the gazette Notice published by the Board of Directors.
 8. The respondents entered appearance dated 28th October 2024 and file a Notice of Preliminary objection dated 13th November, 2024 to the effect that this court lacks jurisdiction to hear and determine this matter and secondly that the application is defective for want of jurisdiction by dint of section 3 of the *Companies Act* as read with the Practice (sic) issued by the Chief Justice on 18th November, 1997.
 9. Before the Court could determine the preliminary objection, an application dated 30th January 2025 was filed by Syokimau Farm Limited seeking to be enjoined in the proceedings herein as interested party.
 10. On 24th February 2025, the parties agreed by consent to have the application for joinder of Syokimau Farm Limited as an interested party and the court issued orders to that effect. The court also granted leave to the ex parte applicant and the interested party to file and serve any written response to the respondent's preliminary objection and directed parties to appear for oral submissions on 25/3/2025.
 11. The applicant and interested party did not file any other documents but they participated in the oral submissions on the merits of the preliminary objection with the interested party supporting the respondents' position while the ex parte applicant opposed the preliminary objection.
 12. In his oral submissions, Mr. Odhiambo on behalf of the respondents submitted that this court has no jurisdiction to hear and determine the judicial review proceedings because section 3 of the *Companies Act* defines the Court to be the High Court and that the 1997 practice directions provide that company disputes have to be heard by the Commercial Division of the High Court. That the dispute herein is over winding up proceedings which this court as judicial review court has no jurisdiction to hear and determine. He relied on the case of Republic versus AG and 2 others ex parte Explico Insurance Company Ltd, JR 261 of 2014. He submitted that the facts of this case require viva voce evidence which judicial review does not allow.
 13. Counsel for the respondents also relied on Republic v Registrar of Companies and 2 others Ex parte Waterfront Outlets JR 59 of 2022 where the court struck out judicial review application on account that the dispute revolved around the *Companies Act*.



14. Mr. Kamau on behalf of the interested party submitted that his client denies that the interested party was wound up voluntarily as alleged by the applicant and that the dispute was a commercial one. That the applicant was not the liquidator of the interested party and that it is only before the commercial court where parties will canvass the dispute by way of viva voce evidence. he relied on *R Minai Colect Ltd V Department of Business Energy and Industrial Strategy* [2022] EWHC cited in *Somafar Ltd v Sar AG Ltd* [1978] eKLR where the court is said to have held that disputes involving private entities even if involving regulatory entities are not public law matters. It was submitted that there are a myriad of issues being raised by the applicant and interested party which cannot be resolved by judicial review proceedings.
15. Opposing the preliminary objection, Ms Gichuki counsel for the applicant submitted that the PO as raised was not a pure point of law. That it is not clear which law was cited and that the interested party was wound up in 2013. That this court was being asked to examine evidence and that judicial review is not limited from hearing evidence by way of testimonies. That as the company was wound up, the commercial court may not have capacity to resolve issues raised which involve a public body. She urged that the Preliminary Objection be dismissed,

Analysis and determination.

16. I have considered the preliminary objection as filed and argued by all the parties. The issue for determination is whether the preliminary objection is merited.
17. The law on preliminary objection is well settled in the case of *Mukisa Biscuit Manufacturing Co. Limited vs. West End Distributors Limited* [1969] EA 696, where Newbold, V.P, observed as follows:

“ A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of Law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points by way of preliminary objection does nothing but unnecessarily increase cost and, on occasion, confuse issues. This improper practice should stop.”
18. The respondents contend that this court has no jurisdiction to hear and determine the dispute which is reserved for the High Court under section 3 of the *Companies Act* and that the Practice Directions issued by the Chief Justice on 18th November, 1997 provide for matters which shall be deemed to be commercial matters hence only the Commercial Division of the High Court can hear and determine them. Some of these matters are:
 1. All proceedings in which an injunction is sought to restrain the realization of securities whether debentures or charges.
 2. All company matters and applications including winding-up, excluding cases in which a Company is suing or being sued as an entity.
 3. All Bankruptcy matters, among others
19. The respondents relied on *Samuel Kamau Macharia & Another v. Kenya commercial Bank & 2 Others*, Application No. 2 of 2011 [2012] eKLR, where the Supreme Court pronounced itself on jurisdiction thus [paragraph 68] inter alia:

“(68) A Court’s jurisdiction flows from either *the Constitution* or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by



the constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law...”

20. I must first correct Mr. Odhiambo in his erroneous submission that this court’s jurisdiction is ousted because it is not the High Court and he submitted, quite ignorantly as follows:

“We acknowledge that the judicial review division is a court with the status of the High Court. However, from the facts of the case and the provisions of section 3 of the Act as read together with the practice directions, it is our considered view that the complaints raised by the applicants herein would be best solved at the Commercial Division of the High Court.
...this court has no jurisdiction and competence”

21. Judicial Review Division has never been a court with the same status with the High Court. It is a Division of the High Court established under section 11 of the High Court Organization and Administration Act. The section provides as follows:

“ 11. Establishment of Divisions

- (1) For purposes of promoting effectiveness and efficiency in the administration of justice and promoting judicial performance, the Chief Justice may, where the workload and the number of judges in a station permit, establish any of the following divisions—

- (a) the Family and Children Division;
- (b) the Commercial Division;
- (c) the Admiralty Division;
- (d) the Civil Division;
- (e) the Criminal Division;
- (f) the Constitutional and Human Rights Division;
- (g) the Judicial Review Division; and
- (h) any other division as the Chief Justice may, on the advice of the Principal Judge determine.

- (2) Every division of the Court shall consist of—

- (a) a Presiding Judge designated by the Chief Justice as the head of the Division;
- (b) such number of judges as the Chief Justice may determine;
- (c) a Deputy Registrar who shall be responsible to the Presiding Judge in the discharge of the functions of the office; and
- (d) officers appointed under section 24.

22. A Division of the Court is defined under section 2 of the above Act as:

“Division” means a division of the High Court established under section 11.”



23. From the above provisions of the law, noting suggests that the Judicial Review Division of the High Court is just another court with the equal status of the High Court but a Division of the High Court established by the Chief Justice for purposes of promoting effectiveness and efficiency in the administration of justice and promoting judicial performance.
24. The High Court is established under Article 165 of *the Constitution* and jurisdiction of the Court is found in the said Article among other Articles and statutory provisions. It is therefore quite surprising that Mr. Odhiambo can submit that this court is not the High Court hence it has no jurisdiction to hear the dispute before it and that it is incompetent to hear and determine the dispute herein before it. That notion and submission is hereby dismissed in limine to allow the court to determine what the preliminary objection has raised, properly so called, is all about.
25. Nonetheless, My understanding of the type of jurisdiction that Mr. Odhiambo was raising in the preliminary objection is that the matter before this court involves parties who are disputing whether or not the interested party was voluntarily wound up and that to resolve that kind of a dispute, viva voce evidence would be required, yet these are judicial review proceedings which do not require viva voce evidence. That being a winding up dispute, it is the Commercial division of the High Court that can determine the merits of the dispute, pursuant to the practice directions given by the Chief Justice in 1997.
26. Ms Gichuki counsel for the applicant on the other hand submitted that even this court can take viva voce evidence in judicial review proceedings.
27. Judicial review proceedings are primarily concerned with the legality of decisions or actions taken by public bodies, not with determining disputed questions of fact, such as whether a company was wound up or not. That kind of factual dispute is typically resolved through ordinary civil proceedings, such as a suit in a commercial court, where parties can present evidence and the court can make factual determinations.
28. I have perused the pleadings as filed and the introduction into this matter of the interested party and its pleadings. It is clear that there is a serious dispute as to whether the interested party was wound up or not. In other words, a company which is said to have been wound up, in 2013, and which was even gazetted as having been wound up, and the dispute of winding up having been investigated by the Directorate of Criminal Investigations and advisories given by the Director of Criminal investigations over alleged forgery of documents, although the applicant claims that he is the liquidator of the said Company, the gazette Notice was published signed by the Board of Directors of the alleged wound up company and not the liquidator.
29. The respondents were in doubt as to whether the company was wound up and gave directions for compliance having found that the alleged winding up was not notified to the Registrar within 14 days of the meeting that resolved to wind up the company, among other deficiencies.
30. This case is the type where a party alleged to have died long ago has otherwise resurrected from the dead and appeared and is here saying, I am not dead. I am and I never died!
31. From the material filed by the applicant and the interested party, it is apparent that the dispute is over whether there was winding up of the interested party or not. That is a matter that can only be determined by way of evidence being adduced by the parties and requiring cross examination of witnesses especially, there being serious allegations of fraud on the part of the exparte applicant who claims to be the liquidator of the resurrected company.



32. In Republic v Registrar of Companies & 2 others Ex-parte Waterfront Outlets Limited 2023 KLR JR E059 of 2022 A.K Ndung'u J upheld the preliminary objection on which forum ought to hear and determine company law matters.
33. In the case of Republic v Registrar of Companies & 2 others; Waterfront Outlet Limited (Interested Party); Waterfront Outlets Limited (Ex Parte) [2023] KEHC 227 (KLR), the High Court addressed the issue of judicial review jurisdiction in company law matters. On Jurisdiction of the Court, the learned Judge emphasized that jurisdiction is a fundamental issue that must be determined before proceeding with any matter.
34. In that case, the Court found that the dispute involved company law matters, specifically concerning the powers of the Registrar of Companies under the *Companies Act*. Therefore, the appropriate forum for such disputes was found to be the Commercial Division of the High Court, as outlined in the Chief Justice's Practice Directions of 1997.
35. On the scope of Judicial Review, the Court in the same case reiterated that judicial review is a special jurisdiction focused on the decision-making process of public bodies. It is concerned with the legality, rationality, and procedural propriety of decisions, not with the merits of the decisions themselves. The Court found that the ex parte applicant's application, which sought to challenge the Registrar's decision on the merits, was not suitable for judicial review.
36. The court upheld the preliminary Objection raised by the respondents, concluding that the judicial review division lacked jurisdiction over the matter. The Court noted that even with the expanded scope of judicial review under the new constitutional dispensation, judicial review remains a special jurisdiction that is majorly restricted to examining whether an administrative decision conforms to the requirements of legality, rationality, and procedural propriety.
37. I agree with the holding in the above cited case that indeed, the appropriate Forum for Company Law Disputes arising from the *Companies Act*, such as those involving the powers of the Registrar of Companies and winding up disputes should be redressed in the Commercial Division of the High Court. That Division is specifically designated to handle company law matters, including winding-up proceedings, as per the Chief Justice's Practice Directions of 18/7/1997
38. It is for the above reasons that this court finds and holds that the application by the ex parte applicant herein is disguised as judicial review that seeks a merit review of the dispute which involves determinations on whether or not the interested party was wound up in accordance with the law. Judicial review is not the appropriate forum to resolve contested factual issues like the winding up of a company.
39. Accordingly, having found that judicial review cannot resolve the dispute herein between the parties, it would be a waste of precious judicial time to escalate the matter to merit hearing. I find the preliminary objection dated 13th November, 2024 to be meritorious. It is upheld. Consequently, the application dated 20th September, 2024 is found to be incompetently filed before this court. It is hereby struck out with no orders as to costs.
40. This file is closed.

DATED, SIGNED AND DELIVERED AT NAIROBI VIRTUALLY THIS 6TH DAY OF MAY, 2025

R.E. ABURILI

JUDGE

