



REPUBLIC OF KENYA



KENYA LAW
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Kenya Revenue Authority v Okla Holdings Limited & 2 others (Commercial Case E001 of 2024) [2024] KEHC 8090 (KLR) (20 June 2024) (Ruling)

Neutral citation: [2024] KEHC 8090 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
COMMERCIAL CASE E001 OF 2024
RE ABURILI, J
JUNE 20, 2024**

BETWEEN

KENYA REVENUE AUTHORITY APPLICANT

AND

OKLA HOLDINGS LIMITED 1ST RESPONDENT

BENSON OTIENO KISERO 2ND RESPONDENT

REGISTRAR OF COMPANIES 3RD RESPONDENT

RULING

1. The Applicant is Kenya Revenue Authority, Kenya's statutory mandated Tax Master Collector. It seeks orders vide its Notice of Motion dated 27th November 2023 that the 1st Respondent Okla Holdings Limited be restored by the 3rd Respondent Registrar of Companies, to the Registrar of Companies; that cost of the application be provided for.
2. The application is predicated on the 12 grounds on the face of the application and a supporting affidavit sworn by Victor Mino, the officer of the Applicant appointed under Section 13 of the *Kenya Revenue Authority Act* and authorized to swear the affidavit on behalf of the applicant.
3. The application is brought under Sections 916 and 917 of the *Companies Act* and Section 3A of the *Civil Procedure Act*.
4. From the deposition of Mr. Mino, reiterating the grounds in support thereof, the application deposes that Section 5(2)(a)(i) of the *Kenya Revenue Authority Act* obligates the Applicant to assess, collect and account for all revenues in accordance with the law and that the 1st Respondent company is a Registered tax payer under PIN P052024374Y while the 2nd Respondent is the Director of the 1st Respondent hence accountable for the operations of the 1st Respondent.



5. It is deposed that the 1st Respondent owes the Applicant unpaid Value Added Tax amounting to Kshs.49,894,312.96 and this continues to accrue interest and penalties as shown by the annexed itax ledger.
6. However, that the 1st Respondent applied to the 3rd Respondent under Section 817(1) of the Companies Act to be struck off the Register and vide Gazette Notice No. 10484 published in Vol. CXXIV No. 176 on 2nd September 2022, the 3rd Respondent struck off from the Register the 1st Respondent, in exercise of 3rd Respondent's powers under Section 897 (3) and (4) of the Companies Act.
7. The Applicant's case is that under Section 900 (1) (c) of the Companies Act, any person who makes an application under Section 897 on behalf of the company is required to copy the application to every person who at any time on that day is a creditor of the company.
8. In addition, the Applicant asserts in deposition that Section 36(1) of the Value Added Tax Act requires that every VAT registered tax payer who ceases to make taxable supplies to apply to the commissioner, for the cancellation of the person's registration, within 30 days of the date of the date the person ceases to make taxable supplies.
9. Additionally, that Section 10 of the Tax Procedures Act requires any person who ceases to be required to be registered for the purpose of tax law to apply to the commissioner for deregistration under the specific tax law.
10. It is contended that in the instant case, the 1st Respondent never served the Applicant with copy of the application to dissolve as required under Section 900 of the Companies Act and Section 36 of the VAT Act as well as Section 10 of the Tax Procedures Act which is a demonstration of its intention to conceal its application for dissolution, from the applicant.
11. That as the 1st Respondent never notified/applied under Section 81(2) (3) of the Tax Procedure Act for deregistration or cancellation of registration, it would be liable to a penalty of Kshs.100,000 monthly.
12. That in this case, for failure to apply to be deregistered with Kenya Revenue Authority, the 1st Respondent has accrued penalties exceeding one million which continue to accrue.
13. It was further deposed that Section 201 (b) (i) of the Constitution provides that the burden of tax shall be shared fairly and that no tax can be levied except by law provided.
14. That the 1st Respondent was struck off the companies Register before clearing the taxes due which are a debt hence this application under Section 916 (1) (c) (ii) and (2) (f) of the Companies Act which allows this court to restore the 1st Respondent to the Register of Companies so that it can account for the unpaid taxes.
15. Opposing the application, the 2nd Respondent Benson Otieno Kisero swore a replying affidavit on 5th March 2024. In his deposition, he states that having registered the company on 31st May, 2022, the 1st Respondent company was unable to operationalise as the intended purpose for which it was registered failed to materialise hence it was rendered redundant. That by special resolution of 12th April 2022, the company was dissolved and he also applied to the 3rd Respondent Registrar of Companies to have the company struck off the Register as it had ceased carrying out business from 12th April 2022 upon which the deregistration was published in Kenya Gazette No. 10484 dated 22nd August 2022.



16. That as the company never transacted any business since its incorporation, it could not have incurred any tax liability and that therefore it has no creditors to warrant it to issue Notice to them pursuant to Section 900 (i) (c) of the *Companies Act*.
17. That therefore, as the 1st Respondent did not owe any liabilities, or taxes, there was no justifications for its restoration to the Register of companies, and that the Registrar of Companies must have done due diligence before deregistering the 1st Respondent.
18. That in any event, the applicant is guilty of undue delay of over one (1) year and five (5) months in filing this application as the Deregistration was gazetted on 22nd August 2022 hence, the Notice of Motion is not made in good faith but intended to punish and frustrate the 2nd Respondent with unreasonable penalties yet the company was rendered redundant in April, 2022 upon which he followed due process in dissolving it.
19. That is application is premature as the applicant ought to first have applied to the third respondent to register the company pursuant to section 912 of the *Companies Act* prior to approaching this court and that he would raise a preliminary objection to that effect that this court is devoid of jurisdiction to hear and determine this application.
20. The parties' counsel argued the application orally, reiterating the pleadings and replying affidavit which I need not reproduce. The applicant maintained that they are entitled to the orders sought and that the 2nd respondent's deposition and allegation that the applicant was guilty of laches was not founded as section 917 of the *Companies Act* provides for a period of six years for such application to be filed Further, that restoration of the respondent to the register of companies will allow the process of settlement of tax or waiver thereof hence it is not a death sentence to the 1st respondent as there will be an opportunity to engage in alternative dispute resolution mechanisms as well as the Tax Amnesty processes which include applying to the Tax Appeals Tribunal and an appeal to the High Court.
21. Mr Oketch submitted that this was a public interest matter as there are other such pending matters affecting other companies and that Kenya's debt portfolio was over 6 trillion thereby affecting the country's debt credit rating.
22. opposing the application, Mr. Mbeka counsel for the 1st and 2nd respondent submitted that his clients complied with section 99 of the *Companies Act* as it never owed any tax to KRA, although it never annexed any tax Clearance certificate. It was submitted that the deregistration was gazetted and that the applicant never objected until one year and five months later which was inordinate delay. It was submitted that the application was made in bad faith as it was intended to punish the 1st and 2nd respondents with taxes that they never owe and the 1st respondent was never operational and that it complied with the law that is why the Registrar of Companies deregistered it. Counsel urged this court to dismiss the application.
23. In a brief rejoinder, Mr Oketch submitted that section 900 of the *Companies Act* mandates every company applying for deregistration to serve a copy of the application to a class of listed persons including the applicant herein and creditors, irrespective of whether the company thinks that it owes any debt or tax obligation or not. Further, that there is an administrative requirement that every applicant company also seeks for a tax clearance certificate.
24. The 3rd respondent registrar of Companies was served but never filed any document on record to oppose or support the application.



Determination

25. I have considered the application and the opposition thereto. Section 897 of the [Companies Act](#) No. 17 of 2025 provides for striking off the register or deregistration of a company from the register by the Registrar, on an application and the conditions precedent to the deregistration. The section mandates that before such striking off can take effect, through a gazette Notice, three months from date of publication of the name of the company in the Kenya gazette must have lapsed and that the Registrar must have invited any person to show cause why the company should not be struck off the register. Section 897 (4)&(5) must be read together with 897(3).
26. In this case, I have perused Gazette Notice No. 10484 of 2nd September, 2022, Volume CXXIV-176 and the Gazette Notice is clear that the striking off of the 1st respondent company was to take effect from the date of publication of the Notice. There is no evidence that there was another gazette Notice giving Notice prior to the above quoted Gazette Notice which is contrary to section 897 of the [Companies Act](#).
27. In addition, there is no indication that the Registrar ever invited any person to show cause why the company should not be struck off the Register. That omission in itself from the onset, renders the gazette Notice and the purported striking off of the Register of the 1st respondent company, before issuing three months Notice and Notice to show cause, null and void *ab initio*, noting that the Notice was contravening section 897 (3) of the [Companies Act](#).
28. Further, under section 900 of the [Companies Act](#), copy of the application for striking off has to be given to members, employees of the company, creditors of the company, director of the company, manager or trustee. There are penalties prescribed for non-compliance with the requirements under this section. There was no evidence of such notice being given to any such persons listed prior to the striking off. The section contemplates Notice prior to the Notice of striking off. The latter Notice is what was issued, not the former, giving the listed interested parties an opportunity to challenge the striking off the Register.
29. Albeit in this case, the 2nd respondent in his deposition contended that there was no application to the Registrar for restoration as stipulated under section 912 of the [Companies Act](#) hence the application herein is premature. I have perused the provisions of section 912 of the Act and it is clear to me that the same is inapplicable to this case for reasons that the section refers to a situation where the person applying for restoration of the company to the Register is the former director or former member of the company see section 912 (2) (b) of the [Act](#) and the application must be made before expiry of six years of the striking off. It is therefore not true that this application is premature as alleged by the 2nd respondent.
30. The applicable section in this case is section 916 of the Act, which concerns application to court for restoration, which application may be made by, among others, the Attorney general, a creditor, a person who has an interest in the matter or a person with a legal claim against the company. In the instant case, the applicant has annexed to its affidavit a statement of tax obligation by the 2nd respondent company and as to whether or not that tax is due, is a matter that can only be resolved between the applicant and the 1st respondent using the legal procedures available under the [Tax Procedures Act](#) save to state that there is prima facie, evidence of a tax obligation disclosed. It is not disputed that the 1st respondent was a registered tax payer vide PIN No. P052024374Y as shown by the General Ledger Report VMI. Further, there is no evidence that the 2nd respondent or the 1st respondent applied to the applicant for deregistration of the 1st respondent as a tax payer, contrary to the provisions of section 81(2) and (3) of the [Tax Procedures Act](#). It follows that the applicant being a statutory body mandated



to collect tax from all persons was under a duty to demand for compliance by the 1st respondent before such action could be taken by the Registrar in striking off the 1st respondent from the Register of Companies. To do otherwise would be tantamount to aiding tax evasion. Additionally, there are penalties provided for under section 897 (4) and (5) of the *Companies Act* for non-compliance with the said section and in this case, I find that the registrar was complicit in aiding the other two respondents' non-compliance with the said section.

31. Furthermore, section 10 of the *Tax Procedures Act* mandates that a person who ceases to be required to be registered for purposes of a tax law shall apply to the Commissioner for deregistration under that specific law within 30 days of ceasing to be so required to be registered. In this case, the 2nd respondent claims that he followed the procedure for dissolving the 1st respondent that is why the 3rd respondent Registrar struck it off the Register. I beg to disagree as stated above and in addition, the question is, has the 1st and 2nd respondents applied under section 10 of the *Tax procedures Act* to be deregistered for VAT payment as per the Genetral Ledge Report annexed by the applicant to its affidavit in support? The answer is a big no.
32. I further find no statutory bar or limitation affecting the application herein as the six year period for making such application has not lapsed.
33. For all the above reasons, I find and hold that the application herein dated 27th November, 2023 by the applicant Kenya revenue Authority for restoration of the 1st respondent Okla Holdings Limited to the Register of Companies is found to be meritorious. I allow the application dated 27th November, 2023 and direct the 3rd respondent Registrar of Companies to restore to the register of companies, the name of the 1st respondent, and 1st, 2nd and 3rd respondents shall accordingly, comply with the provisions of sections 919 and 920 of the *Companies Act*.
34. For avoidance of doubt, upon service of this ruling and order upon the 2nd and 3rd respondents herein, the 2nd respondent shall forthwith provide the 3rd respondent with all the documents necessary for the restoration of the 1st respondent to the register and pay any charges that may be necessary as may be assessed by the 3rd respondent, to facilitate such restoration within 30 days of the date of service of this ruling and order upon the 2nd and 3rd respondent.
35. I make no orders as to costs of this Application.
36. This file us closed.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 20TH DAY OF JUNE, 2024

R. E. ABURILI

JUDGE

