



Kabue & 5 others v Munyaka Kuna Company Limited & another (Miscellaneous Application E101 of 2023) [2024] KEHC 11501 (KLR) (Judicial Review) (20 September 2024) (Ruling)

Neutral citation: [2024] KEHC 11501 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
MISCELLANEOUS APPLICATION E101 OF 2023
J NGAAH, J
SEPTEMBER 20, 2024**

BETWEEN

**FRANCIS GITHUKU KABUE 1ST APPLICANT
JOSEPH GAKAYA MAINA 2ND APPLICANT
JOSEPH NDEGWA GATHANGA 3RD APPLICANT
KARANJA MACHARIA 4TH APPLICANT
DEDAN KIMATHI WAIGERA 5TH APPLICANT
HARRISON MAINA KARIUKI 6TH APPLICANT**

AND

**MUNYAKA KUNA COMPANY LIMITED 1ST RESPONDENT
JOSEPH H. KIMANI 2ND RESPONDENT**

RULING

1. The application before court is a chamber summons dated 27 February 2024 expressed to be brought under Articles 22 and 23 as read with Article 47 and 159 of the *Constitution*; Section 4 and 6 of the *Fair Administrative Act*, 2015; Section 1A, IB and 3A of the *Civil Procedure Act*, 2010; Section 8 and 9 of the *Law Reform Act* and; Order 53 and Order 50 Rule 6 of the *Civil Procedure Rules*, 2010.

The applicant seeks the following orders:

- “ 1. That the Honourable Court be pleased to enlarge time for the Applicants to file Judicial Review proceedings for purposes of quashing the decision of the



alleged Board of Directors, the 2nd Respondent and subsequent directors of the 1st Respondent Company with all attendant orders emanating therein.

2. That the decision delivered on the 29th day of July 2023 during the General Meeting be reviewed by this Honourable Court with a view of quashing the same.
3. That leave be granted to the Applicants to apply for an order of Certiorari to remove to this court and quash the orders and decision of the alleged Board of Directors, the 1st Respondent and subsequent directors of the 1st Respondent Company via an order decreeing that the appointment of the 2nd Respondent as Chairman and the subsequent members as the board of directors of the 1st Respondent Company was unlawful and illegal.
4. That leave be granted to the Applicant to apply for an order of Prohibition prohibiting the 1st Respondent either by themselves, their servants, employees, officers and/or any person acting under their directions and control from taking steps, actions and measures to enforce its decision contained in the minutes of the Annual General Meeting held on the 29th day of July 2023.
5. That leave granted herein does operate as a stay of execution of the said decision pending hearing and determination of the Judicial Review Application.
6. That costs be borne by the Respondents in this suit.”

2. The application is supported by an affidavit sworn by Francis Githuku Kabue who states that he and the rest of the applicants have been directors of the 1st respondent company from 24 May 2010. He has also sworn that on the 29 July 2023, the 2nd Respondent called for an Annual General meeting, apparently of the company, and had himself appointed as the Chairman of the Board of Directors without the knowledge or consent of the applicants. The applicants got to learn of this information from one of the members who has been named as one Zaidi Ngiri Mwangi. Mwangi is said to have shown the applicants a letter dated 29 June 2023 inviting the members the company to the Annual General Meeting.
3. The applicants have been advised by their counsel on record, which advice they believe to be true, that the 2nd Respondent's election as the Chairman of the Board of Directors of the company was illegal since it is in contravention of the *Companies Act*, 2015 and their company's Articles of Association and Memorandum of Association. In any case, the 2nd respondent is not even a member of the company.
4. I have considered the applicant's application and submissions.
As far as the prayer for extension of time is concerned, no material has been placed before court upon which the court can consider and exercise its discretion in favour of the applicants to extend time to initiate proceedings for the judicial review order of certiorari.
5. Although the applicants are said to have learned of the meeting of 29 July 2023 from one Zaidi Ngiri Mwangi, they have not stated when they got the information and, therefore, when they learned of the decision which they seek to impeach by way of an order of certiorari.
6. In any event, there is no proof of the existence of the impugned decision. I suppose if there has been a change of directors in the company, the details of the changes are, no doubt, accessible at the Registrar of Companies and it behooved the applicant to avail such information in support of its case, if not for anything else, to demonstrate when they came to know of the impugned decision.



7. The rest of the prayers seeking leave for the applicants to file a substantive motion for judicial review cannot be granted because, first, as far as the prayer for the relief of certiorari is concerned, the applicants have admitted that they are out of time to file a motion for this relief. The prayer for extension of time to file a motion for this relief having been declined, there is no basis upon which to grant leave for an application for the order of certiorari.
8. Secondly, the prayer for leave to file an application for the order of prohibition would not be granted because, first, as noted, there is no proof of the existence of the decision whose implementation is sought to be prohibited. More importantly, however, the applicant's application is not accompanied by the statement which is a mandatory requirement under Order 53 Rule 1(2) of the [Civil Procedure Rules](#) which states as follows:
 - (2) An application for such leave as aforesaid shall be made ex parte to a judge in chambers, and shall be accompanied by a statement setting out the name and description of the applicant, the relief sought, and the grounds on which it is sought, and by affidavits verifying the facts relied on. (Emphasis added).
9. For the foregoing reasons, I hold the applicants' application to be fatally defective, misconceived and an abuse of the due process of the court.

Before I conclude, I note that the applicants filed an application similar to instant one but undated and filed on 2 October 2023. It is not clear why the applicants filed two similar applications. Regardless of the reason, the applications are hereby dismissed.

No response was filed to the applications and, for this reason, I make no order as to costs. It is so ordered.

SIGNED, DATED AND DELIVERED ON 20 SEPTEMBER 2024.

NGAAH JAIRUS

JUDGE

