



**Bhagirajh (Pursuant to Letters of Administration Ad Litem) v Rajput & another;
Capitol Laundry Limited (Interested Party) (Miscellaneous Application E873 of 2020)
[2024] KEHC 12819 (KLR) (Commercial and Tax) (18 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 12819 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E873 OF 2020
FG MUGAMBI, J
OCTOBER 18, 2024**

BETWEEN

**CHANDRAKANT DURGADASS BHAGIRAJH APPLICANT
PURSUANT TO LETTERS OF ADMINISTRATION AD LITEM**

AND

**KIRAN HARILAL RAJPUT 1ST RESPONDENT
THE REGISTRAR OF COMPANIES 2ND RESPONDENT**

AND

CAPITOL LAUNDRY LIMITED INTERESTED PARTY

JUDGMENT

Introduction And Background

1. The applicant (Chandrakant) filed the present suit by way of the Originating Summons (OS) dated 20/7/2020 brought under sections 1A and 3A of the *Civil Procedure Act* as well as sections 122(a), 123, 125, 128, 129, 135, 139 and 142 of the *Companies Act*.
2. Chandrakant contends that he is the brother to Amritlal Durgass Bhagrath Rajput (Amritlal) and Harilal Durga Dass Rajput (Harilal) both of whom are now deceased and were directors of the interested party (“the Company”). Chandrakant urges the court to find that his brothers died on 4/5/2012 and 4/11/2019 respectively and that as of the latter date, the company had no surviving directors.



3. As such, he further contends that the approval for linking of the company online on 19/12/2019 from the email account of Harilal was illegal unlawful and in breach of the Companies Act and Regulations hence null and void. He prays that this court finds that the 1st respondent (Kirani) fraudulently appointed herself a director of the Company on 19/12/2019.
4. He insists that her appointment should be nullified and the 2nd respondent (“the Registrar”) ordered to remove her name from the records of directors of the company. Chandrakant prays that pending the administration of the deceased directors’ estates, the court appoints him as director of the company for the purposes of running the family company in an acting capacity.
5. The OS is supported by the affidavit of Chandrakant sworn on 20/7/2020. It is opposed by Kirani through an undated affidavit filed on 29/11/2023 and by the Company through the replying affidavit of its General Manager, Peter Samoei, sworn on 29/11/2023.
6. Chandrakant depones that the Company is a family business that was incorporated by his late parents in 1974. He states that it came to his attention that on 19/12/2019 the records at the Registrar’s office had been manipulated and that a director had been appointed fraudulently when both his brothers were deceased. Further, that the person who appears in the forms as a director without shares was previously employed as the Company’s Manager.
7. Chandrakant avers that he has lodged an official complaint to the Registrar but his lawyers are yet to receive a response to the same, hence the urgent need to save the Company, which is estimated to be valued at Kshs 700,000,000/=, from fraud and wastage.
8. Speaking further on the fraud, Chandrakant contends that when his lawyer perused the file, it became apparent that company returns had been fraudulently filed. Furthermore, a Special Resolution was purportedly passed by directors who were already deceased, with stamps backdated to 30/8/2012 and others backdated to 7/9/2017 with a payment receipt of December 2019 when his brothers, who were the only directors and shareholders in the Company, were already deceased.
9. Chandrakant confirms that his lawyers then wrote to the Certified Public Secretary one John Katiku CPS 746, whose rubber stamp appears on the Annual Returns. CPS Katiku denied knowledge of the returns and stated that he was not appointed as a company secretary for the Company. Chandrakant’s apprehension is further heightened by the fact that Kirani filed annual returns, purportedly signed by his late brother on 19/12/2019, despite his brother having passed away on 4/11/2019.
10. Chandrakant fears that Kirani may be in the process of transferring all funds from the Company’s account to her own accounts. His concern arises from the fact that she appointed herself the sole signatory to the bank accounts at Diamond Trust Bank Limited, using a fraudulently obtained CR12 form.
11. He considers her a flight risk and is frustrated by the Registrar’s delay in acting on his complaint. He also confirms that letters of administration have not yet been obtained, and he needs to manage the Company’s affairs and appoint a company secretary in the meantime. Chandrakant contends that correcting the records will require a specific order from the court, hence this application.
12. In response to the OS, Kiran confirms her marriage to the late Harilal, the Company’s majority shareholder until his death on 4/11/2019. She states that she, along with Sohanlal Durgadass Rajput, Harilal’s elder brother, are joint administrators of her late husband’s estate in HC Succession Cause No 101 of 2020.



13. She claims that she was appointed a director of the Company through a resolution made in a meeting held on 30/12/2012 at the offices of M/s Bhatia Registrars, the Company's secretaries. She maintains that as a director of the Company, she has always been a signatory of the Company account No 014****001 at Diamond Trust Bank and not a stranger as falsely alleged by Chandrakant.
14. Kiran asserts that she has been signing cheques even prior to her husband's death. To substantiate this, she has attached a copy of a review/entitlement of an overdraft facility from the said bank dated 26/2/2019 and a hire purchase agreement dated 2/6/2017 both executed by herself and her late husband as directors of the Company.
15. Kiran avers that, with the support of the Company's employees, she has managed to keep the Company running and meeting its obligations even after the death of her husband, the Managing Director. She confirms that her late husband was the majority shareholder of the Company, holding 1,500 of the 1,700 issued shares, while the remaining 200 shares were held by his late brother, Amritlal.
16. As such, she asserts that Chandrakant is neither a shareholder nor a director of the Company and has no legally recognized interest that would justify the grant of the orders sought in the OS. She contends that it is evident from these proceedings that Chandrakant's true interest lies in her husband's estate, which is to be determined in HC Succession Cause No 101 of 2020, where Chandrakant is an objector.
17. Kiran depones that, as a beneficiary of her late husband's estate, it is in her interest that the Company continues to operate smoothly. She contends that the allegations that she is in the process of transferring all the Company's funds into her own accounts are false, and so is the averment that she is a flight risk. She further denies the claim that she manipulated or participated in the manipulation of records at the Registrar's office. She asserts that she did not appoint herself as a director of the Company, as alleged, and that she was an active director during her husband's lifetime.
18. The Company confirms that since incorporation in 1974, its ownership had changed over time and that the relevant details were on record at the Registrar's office. The Company further confirms that up until 4/5/2012, it was owned by siblings Amritlal and Harilal. On 4/5/2012, Amritlal passed away.
19. The remaining director, Harilal, along with the then Company Secretary, Jitendra T. Swally, passed a resolution on 30/12/2012, at a meeting held at the offices of Bhatia Registrars, the Company's secretaries, appointing Kiran as a director. This was in accordance with section 177 of the now-repealed Companies Act, which required at least two directors for a Limited Liability Company.
20. The Company states that the minutes and resolution appointing Kiran as a director, the notification of change of directors and secretaries (Form No 203A), reflecting Kiran's appointment and the relevant returns were duly prepared and filed at the Company's registry on 4/6/2013. This was after making the requisite payment of Kshs 4,700/=. The Company adds that Harilal and Kiran continued to run the Company without interference until Harilal's death.
21. The Company contends that prior to 2013, it engaged the firm of Bhatia Registrars to file annual returns. However, due to Harilal's prolonged illness, Kiran's limited knowledge and the closure of Bhatia Registrars, the filing of returns fell into arrears. In 2019, the management staff was instructed to procure new company secretarial services, and they engaged Faith Ndunge Nzioka, who claimed she could file the returns.
22. The Company later received a complaint from the Registrar stating that these returns were fraudulently filed without following proper procedures. Efforts to trace Faith Ndunge Nzioka were unsuccessful, prompting the Company to report the matter to Parliament Police Station for further investigation in August 2020, where a statement was recorded.



23. The Company asserts that there was no wrong doing on its part regarding the filing of returns and denies any ill intentions, despite Chandrakant's allegations. It confirms that on 15/9/2020, the Registrar, Joyce C. Koech, sent a letter to Kiran (instead of the Company) via email, raising questions on her appointment, returns filed for various years which had a similar receipt number (D0655851), and which returns had been disowned by the CPS allegedly involved in their filing, and access to the e-Citizen portal using the account of a deceased former director. The Registrar gave Kiran 14 days to respond, failing which she would be removed as a director.
24. Kiran, through her then advocates, Ms Ongori Auta & Company Advocates, responded with a letter dated 28/9/2020, outlining the circumstances of the returns. This letter was sent via email on 30/9/2020 to correspondence.brs@ag.go.ke as government offices were closed to the public due to the COVID-19 pandemic. However, the Registrar did not acknowledge receipt of the email or respond to the letter. Kiran and the Company therefore believed that no further action was needed.
25. Despite this, on 9/12/2020, the Registrar issued a new letter, stating that Kiran had failed to respond to earlier communications. The letter claimed that Kiran had lodged or caused to be lodged documents that altered the directorship of the Company and, as a result, her directorship was removed from the register due to this and forgery under section 862 of the [Companies Act](#).
26. The Company contends that the Registrar's actions were not in line with her constitutional and statutory mandate. It alleges possible financial inducement from Chandrakant, along with the involvement of her assistant, Zachariah Mwangi, who deposed to an affidavit full of falsehoods.
27. The Company also points out that Chandrakant has never been a director, shareholder, or employee of the Company, and therefore, has no legal standing to file the current application or suit. His interest in the Company is unclear, as he is neither a beneficiary nor a dependent of the deceased Harilal's estate. The Company argues that Chandrakant cannot control its assets or operations, and there is no legal basis to appoint him as a signatory to the Company's accounts.
28. The Company asserts that the grant obtained by Chandrakant in HC Succession Cause No 200 of 2020, which forms the basis of his claim in this suit, was obtained through fraud, misrepresentation, and providing incorrect information to the court. Chandrakant allegedly used the grant to obtain money on behalf of the Company under the pretense of borrowing to pay utilities.
29. This prompted an inquiry by the DCI, where the Company denied his claims. The Company reiterates that Kiran, who was duly appointed in 2013, remains the sole surviving director and has been involved in the running of the Company and managing its accounts long before Harilal's death. The Company argues that the Registrar had no legal basis to remove Kiran as a director without consulting the Company, and it should not have entertained a complaint from someone who is not a director or legally instructed representative.
30. The Company further states that the subject property forms part of the estate of the deceased, which is pending determination in HC Succession Cause No 101 of 2020. Kiran can only be removed as a director by the shareholders who inherit the deceased's shares, as well as the beneficiary of Amritlal's shares. The Company warns that it risks suffering irreparable damage, as it is a multi-million enterprise. If left unresolved, this situation could lead to the Company's downfall, adversely affecting the estate of the deceased, which the court must protect.

The Company's application dated 27/5/2024:

31. The application was made under sections 1A, 1B & 3A of the [Civil Procedure Act](#) and Order 1, Rule 3, & 10(2) and Order 45 Rule 1 & 2 of the [Civil Procedure Rules, 2010](#). It seeks to review the court's



- orders of 23/9/2022 to allow Kiran and the Bank to make payment of the required sums of Kshs 7,923,692.00/= for March and April.
32. It also seeks orders for monthly payments at a tune of Kshs 7,192,917/= for subsequent months for the rest of 2024. This application is supported by grounds on its face and the affidavits of Peter Samoei sworn on 27/5/2024 and 29/7/2024. It is opposed by Chandrakant through his replying affidavit sworn on 18/7/2024.
 33. The Company contends that it has been adversely affected by this court's order of 23/9/2022, which suspended Kiran as a signatory to the Company's Diamond Trust Bank Account No 014****001, pending the hearing and determination of the case. This order has significantly disrupted the Company's operations as it has urgent and immediate financial obligations that can only be met using funds from the aforementioned bank account, which have been inaccessible due to the court's order.
 34. The Company notes that a prior consent order, dated 20/12/2022, allowed the withdrawal of Kshs 5,600,000/= from the account. It contends that it will suffer significant prejudice if it is not permitted to access the funds, hence the application, seeking to be allowed limited and supervised access to the funds so as to prevent the Company's operations from grinding to a halt.
 35. In opposition to the application, Chandrakant depones that the Company was not a party to the suit at the time the Ruling was delivered by this court on 23/9/2022, and therefore cannot now purport to file an application to set aside that Ruling. He asserts that the Company continues to violate the court's Ruling by allowing Kiran to sign documents as a director, despite her formal removal as a director due to forgeries.
 36. Chandrakant further argues that the Company's deponent lacks the legal capacity to swear the affidavit on behalf of the Company, having been appointed or nominated by a director who is illegitimate. He contends that Kiran was removed from the records at Sheria House after falsifying annual returns and fraudulently filing documents. Chandrakant concludes that the application is frivolous, lacks merit and constitutes an abuse of the court process.
 37. He further states that the application seeks to have access to Kshs 15,116,609/=-, despite having only utilized Kshs 5,600,000/= since December 2022. This, he argues, raises doubts about the accuracy of the estimates submitted to the court, suggesting that the figures may be fabricated. He further notes that the firm of Riunga Raiji & Co Advocates is on record for Kiran, not the Company, and therefore, the Company cannot make prayers on behalf of a party it has no authority to represent.
 38. Chandrakant refers to the court's Ruling of 10/11/2023 at paragraph 38, where the court finds that the Orders should be in place as they seek to preserve the Company. It is his contention that the prayer for review is therefore res judicata as the same was adjudicated in the application of 18/10/2022 by this same court. He argues that there being no special resolution by a legally constituted Board, the application has no legal basis.
 39. He takes issue with the Company noting that it has never furnished any verifiable audited reports since it was allowed to access Kshs 5,600,000/= on 20/12/2022. Accordingly, Chandrakant advances that the application is fatally defective, bad in law and an abuse of the due process of the court and ought to be thrown out with costs.
 40. These two applications by Chandrakant and the Company are now the subject of the court's determination. They were canvassed by way of written submissions which I have carefully considered together with the evidence, authorities and pleadings filed by the respective parties. It is important to point out that the Registrar did not participate in these proceedings.



Analysis and Determination

41. I propose to first deal with the main suit as its determination has the effect of disposing of the Company's application for review. The issues that arise for determination in the OS are as follows:
- i. Whether the court should find that the two directors of the Company, that is, Amritlal and Harilal died on 4/5/2012 and 4/11/2019 respectively and the company had no directors from 4/11/2019;
 - ii. Whether the approval for linking of the Company done online on 19/12/2019 from the e-mail account of Harilal was illegal and hence null and void;
 - iii. Whether Kirani fraudulently appointed herself a director of the Company on 19/12/2019 and whether the appointment should be nullified by this court;
 - iv. Whether the Registrar should forthwith remove the name of Kirani from the records of directors of the Company;
 - v. Whether pending the administration of the deceased estate, this court may appoint Chandrakant as director of the Company for the purpose of running the Company in an acting capacity; and
 - vi. Who should pay the costs of the OS.

Whether the Court should find that the two directors of the Company; Amritlal and Harilal died on 4/5/2012 and 4/11/2019 and that the company had no directors as at 4/11/2019:

42. It is not contested by any of the parties that the Company's directors Amritlal and Harilal died on 4/5/2012 and 4/11/2019 respectively. I therefore have little hesitation in finding this to be the case, as I hereby do, having also had sight of the death certificates in respect of the two. I would thus answer the first part of this issue in the affirmative.
43. The question in contention is whether their deaths meant that the Company had no directors as of 4/11/2019. Chandrakant asserts that the late Amritlal and Harilal were the only shareholders and directors of the Company whereas Kiran contends that she was appointed as a director on 30/12/2012.
44. I have reviewed the company search dated 18/1/2019 annexed by Chandrakant which confirms that Amritlal and Harilal were indeed the sole initial directors of the Company. Kiran in turn, annexed minutes from a company meeting held on 30/12/2012 indicating that she was appointed as a director on that date. Other documents she relies on include the Company's annual returns and a hire purchase facility letter from Diamond Trust Bank. She asserts that these documents are proof that she has always been a director and has been actively involved in the Company since her appointment.
45. It is also true that the changes of Kiran's directorship were effected by the Registrar as evidenced by the CR12 dated 14/1/2020 and 12/2/2020 annexed in evidence by Chandrakant and the Company. The Company admitted that Kiran's directorship and the veracity of the process of her appointment was questioned by the Registrar as evidenced by the Registrar's letter of 15/9/2020. Subsequently, through the letter of 12/12/2020, Kiran's directorship was revoked due to "improper lodgment and or forgery" and it was directed that the position reverts to what it was before the purported changes.
46. Despite the Company's protests in this suit and to the Registrar, it appears that this position has never changed. The inexorable conclusion to draw is that the contents of a letter such as that of 12/12/2020 issued by the Registrar is prima facie evidence of the Company's information.



47. Having reviewed the record, I find that Kiran has not substantially addressed the serious allegations of fraud, forgery, and improper lodgment of her directorship, as raised by the Registrar and Chandrakant. I also note that she has not responded to the claim that annual returns were fraudulently filed, that a special resolution was passed by directors who were already deceased, and that stamps were backdated to 30/8/2012 and 7/9/2017, with a payment receipt dated December 2019, well after the brothers had passed away.
48. I agree that indeed, it was not possible for Harilal to have signed the annual returns on 19/12/2019, as he had died just over a month earlier. The Company's claim that one Faith Ndunge Nzioka filed the said returns and that she is now missing is unsupported by any evidence.
49. Furthermore, I find that Kiran never responded to the allegation that the annual returns for the years 2012-2017 contain glaring errors and anomalies, including the apparent forgery of the rubber stamp of Certified Public Secretary Mr. John Katiku. He is purported to have signed in his capacity as the Company secretary, yet there is no record of his appointment, and he personally renounced any involvement as Company secretary or signing any annual returns, as evidenced by his letter dated 11/3/2020.
50. It is therefore my finding that the Registrar's position, that the Company's directorship reverts to its original composition has not been rebutted. Accordingly, I agree with Chandrakant that there were no valid directors of the Company as of 4/11/2019.

Whether the approval for linking of the Company online on 19/12/2019 from the e-mail account of Harilal was illegal, unlawful and in breach of the Companies Act and Regulations hence null and void:

51. Having established that Harilal died on 4/11/2019, there is no conceivable or legitimate explanation for how any action could have been taken by him on 19/12/2019. The approval for linking the Company online from his email account, purportedly executed over a month after his death, clearly points to acts of forgery. Such actions are not only illegal and fraudulent but also a direct violation of the Companies Act and regulations.

Whether Kirani fraudulently appointed herself a director of the Company on 19/12/2019 and whether the appointment should be nullified by this court:

52. The question thus arises: if Harilal was already deceased on 19/12/2019, who made changes to the Company using his account and signed the annual returns on that date? This was a critical question Kiran had to answer, as she is the one relying on these annual returns and the purported changes that elevated her to the position of director. This finding is reinforced by Section 112 of the *Evidence Act*, which states:

“In civil proceedings, when any fact is especially within the knowledge of any party to those proceedings, the burden of proving or disproving that fact is upon him.”

53. In light of Section 112, it was Kiran's responsibility to explain and prove to the required standard, how actions could have been taken in the name of someone who was already deceased and to demonstrate how she was validly appointed as a director according to the annual returns of 19/12/2019, purportedly signed by Harilal and lodged from his email after his death.
54. Since she failed to provide any plausible explanation for this glaring inconsistency, and given that the Registrar has already found evidence of forgery and improper changes, I come to the conclusion that



Kiran fraudulently appointed herself as a director of the Company. Her appointment is, therefore, tainted with illegality and cannot be upheld.

Whether the Registrar should forthwith remove the name of Kirani from the records of Directors of the Company:

55. Having found that the position of the Registrar removing Kiran from the register as a director of the Company has not been rebutted or set aside and that the changes effected on the directorship of the Company were improper, it is my finding that the Registrar's position stands. Accordingly, this court affirms that Kiran's name should be removed as a director of the Company.

Whether pending the administration of the deceased estate, this court may appoint Chandrakant as director for the purpose of running the Company in an acting capacity:

56. Chandrakant submits that the Company is on the brink of collapse unless the Court appoints him as a director in an acting capacity. I have gone through the Companies Act and I find no provision that gives the court authority to appoint directors in the circumstances of this case. The appointment of directors is a preserve of shareholders as has been confirmed by this court in *Mbogo & another v Registrar of Companies; Roberty Njoka Muthara (Interested Party)*, [2021] KEHC 51 (KLR)].
57. I note that the parties are involved in probate and administration proceedings of the deceased directors' estates. Those proceedings will determine who the intended beneficiaries are and with time the shares will be transmitted to the intended beneficiaries. Thereafter, once they are shareholders, they can call for a meeting and appoint directors. I therefore decline to appoint Chandrakant to the position of an interim director.
58. However, I would agree that in the meantime, the Company's operations need to continue and as such, I would be inclined to introduce Chandrakant as a signatory to the Company's account together with Kiran, since she is the administrator of the estate of Harilal to allow the Company meet its obligations. I do so on the strength of the Special Limited Grant dated 27/2/2020, which was issued to Chandrakant for purposes of prosecuting this matter.
59. This appointment is also subject to the distribution of the estate of the deceased and particularly where the shares in the Company are concerned. I say this noting that the issue of whether Chandrakant is a beneficiary in the said shareholding is not a matter for determination by this court.
60. These findings render moot and disposes of the Company's application dated 27/5/2024. The final issue is as to who should bear the costs of the Originating Summons. In as much as Chandrakant has been largely successful in the Originating Summons, in light of the nature of the dispute and relation of the parties, I am of the view that each party should bear their own costs in the Originating Summons and the application and I do so order.

Conclusion and Disposition

61. The upshot of my findings is that the plaintiff's Originating Summons dated 20/7/2020 is merited and ought to be allowed in the following final orders:
- a. A declaration be and is hereby made that the two directors of Capitol Laundry Limited, Amritlal Durgadass Rajput and Harilal Durgadass Rajput (both now deceased) died on 4/5/2012 and 4/11/2019 and the company had no directors as at 4/11/2019.



- b. A declaration be and is hereby made that the approval for linking of the company online on 19/12/2019 from the email account of Harilal Durgadass Rajput (deceased) was illegal, unlawful and in breach of the Companies Act and Regulations hence null and void.
- c. A declaration be and is hereby made that the 1st respondent, Kirani Harilal Rajput fraudulently appointed herself a director of Capitol Laundry Limited on 19/12/2019 and her appointment is hereby nullified.
- d. The Registrar of Companies be and is hereby ordered to forthwith remove the name of Kirani Harilal Rajput from the records of directors of the company.
- e. Pending the administration of the deceased directors' estates and appointment of directors of the Company, this court appoints Chandrakant Durgadass Bhagirajh and Kirani Harilal Rajput as signatories to the Company's Bank Account Number 014****001 at Diamond Trust Bank for the purpose of running the Company.
- f. Each party will bear their own costs of this suit and the application.

DATED, SIGNED AND DELIVERED IN NAIROBI THIS 18TH DAY OF OCTOBER 2024.

F. MUGAMBI

JUDGE

