



**Republic v Office of the Attorney General and Department of Justice
(Business Registration Services) & another; Africa Calling Safaris
Limited (Exparte Applicant) (Judicial Review Application E086 of 2021)
[2024] KEHC 12857 (KLR) (Judicial Review) (24 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 12857 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
JUDICIAL REVIEW APPLICATION E086 OF 2021**

**JM CHIGITI, J
OCTOBER 24, 2024**

BETWEEN

REPUBLIC APPLICANT

AND

**OFFICE OF THE ATTORNEY GENERAL AND DEPARTMENT OF JUSTICE
(BUSINESS REGISTRATION SERVICES) 1ST RESPONDENT**

REGISTRAR GENERAL 2ND RESPONDENT

AND

AFRICA CALLING SAFARIS LIMITED EXPARTE APPLICANT

JUDGMENT

1. The application before court is a Notice of Motion dated 8th July, 2021. It seeks the following orders:
 1. That this Honourable Court be pleased to grant an order of certiorari to remove into this Honourable Court and quash the decision of the 2nd Respondent contained in the letter dated 27th May 2021;
 2. That this Honourable Court be pleased to grant an order of prohibition prohibiting the 2nd Respondent from relying on and/or effecting its decision contained in the letter dated 27th May 2021; and
 3. That the costs of and incidental to this application be provided for.



The applicants case

2. On the 17th day of February 2010, the office of the 2nd Respondent issued a certificate of incorporation to the Ex Parte Applicant under the provisions of the *Companies Act* Cap 486 of the Laws of Kenya.
3. The Ex Parte Applicant continued to operate under the said name until the 13th August 2018 when the Directors of the Applicant received a communique from the 2nd Respondent directing the Ex Parte Applicant Company to change its name and style for the sole reason that the Applicant's name was similar and identical to another company known as Call for Africa Safaris that was registered on the 21st April 1997.
4. It is its case that Section 58(2) only limits the exercise of the powers conferred therein to 12 months from the date of registration of the Company in question was registered.

Analysis and Determination:

5. The application is unopposed.
6. On the 17th day of February 2010, the Office of the 2nd Respondent issued a certificate of incorporation. On the 13th August 2018 the 2nd Respondent directing that the Ex Parte Applicant Company to change its name and style of conducting its business for the sole reason that the Applicant's name was similar and identical to another company known as Call for Africa Safaris registered on the 21st April 1997.
7. On 27th May 2021 registrar threatened to deregister the Ex Parte Applicant Company if the Ex Parte Applicant did not change its name as it directed in the notification of 13th August 2018.
8. Section 7(1) of the *Fair Administrative Actions Act*, No. 4 of 2015 to review an administrative action or decision, if the person who has made the decision has acted in excess of jurisdiction or power conferred to him under any written law and has been reasonably suspected of bias having denied the persons to whom the administrative actions or decision relates, a reasonable opportunity to state their case.
9. In the case of *Pastoli v Kabale District Local Government Council & Others*, (2008) 2 EA 300, that:

“In order to succeed in an application for Judicial Review, the applicant has to show that the decision or act complained of is tainted with illegality, irrationality and procedural impropriety: See *Council of Civil Service Union v Minister for the Civil Service* [1985] AC 2; and also, *Francis Babikirwe Muntu and others v Kyambogo University*, High Court, Kampala, Miscellaneous Application Number 643 of 2005 (UR).

Illegality is when the decision making authority commits an error of law in the process of taking the decision or making the act, the subject of the complaint. Acting without Jurisdiction or ultra vires, or contrary to the provisions of a law or its principles are instances of illegality....”

10. Section 58 provides for the Power to direct change of name in case of similarity to existing name;
 - (1) The Registrar may direct a company to change its name if it has been registered by a name that is the same as or, in the opinion of the Registrar, too similar to—
 - (a) a name appearing at the time of the registration in the Registrar's index of company names; or
 - (b) a name that should have appeared in that index at that time.



- (2) A direction under subsection (1) may be given only within twelve months after the date on which the company concerned was registered or within such extended period as the Registrar may specify in writing in a particular case.
11. It is this court's finding that the Registrar of Companies acted ultra vires and beyond his powers by asking the Applicant to change its name after the expiry of one year from the date of incorporation contrary to section 58 of the *Companies Act*.

Whether or not an order of prohibition should issue:

12. *Halsbury's Laws of England*, 4th Edition, Reissue Vol. 1(1) page 2012 paragraph 109, The order of prohibition is an order issuing out of the High Court directed to an inferior court or tribunal or public authority which forbids that court or tribunal or authority to act in excess of its jurisdiction or contrary to law. Prohibition is employed for the control of inferior courts, tribunals and public authorities. Prohibition is concerned with decisions of the future. Prohibition will issue to prohibit a determination in excess of jurisdiction, error of law on the face of the record or breach of the rules of natural justice.
13. It is this court's holding that when taking administrative action, all public authorities must at all times prompt the rule of law. Any administrative action that is contrary to the law like in the instant case must be prohibited. The Applicant is entitled to the order of prohibition as prayed.

Disposition:

14. The applicant has satisfied this court the registrar of companies acted Illegality is when the decision making authority commits an error of law in the process of taking the decision or making the act, the subject of the complaint.

Order:

1. An order of certiorari to remove into this Honourable Court and quash the decision of the 2nd Respondent contained in the letter dated 27th May 2021 is hereby issued.
2. An order of prohibition prohibiting the 2nd Respondent from relying on and/or effecting its decision contained in the letter dated 27th May 2021 is hereby issued.
3. Costs to the Applicant

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 24TH DAY OF OCTOBER, 2024.

J. M. CHIGITI (SC)

JUDGE

