



Kangari (Suing as the administratrix of the Estate of the Late Joseph Kangari Muhu) v Muhu (Sued as the administratrix of the Estate of the Late James Muhu Kangari) & 2 others; Kangari & another (Interested Parties) (Civil Case E408 of 2019) [2024] KEHC 13958 (KLR) (Commercial and Tax) (8 November 2024) (Ruling)

Neutral citation: [2024] KEHC 13958 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE E408 OF 2019
FG MUGAMBI, J
NOVEMBER 8, 2024**

BETWEEN

**SARAH WANGARI KANGARI APPLICANT
SUING AS THE ADMINISTRATRIX OF THE ESTATE OF THE LATE JOSEPH
KANGARI MUHU**

AND

**SERAH MWERU MUHU (SUED AS THE ADMINISTRATRIX OF THE ESTATE
OF THE LATE JAMES MUHU KANGARI) 1ST RESPONDENT
J M KANGARI & J K MUHU INVESTMENTS 2ND RESPONDENT
VARIANT REALTORS LTD 3RD RESPONDENT**

AND

**JAMES MUHU KANGARI INTERESTED PARTY
TIMOTHY KAMAU KANGARI INTERESTED PARTY**

RULING

Background and Introduction

1. The applicant is the widow of the late Joseph Kangari Muhu and co-administrator of his estate. The 1st respondent is the applicant’s mother-in-law and the widow of the late James Muhu Kangari. For the avoidance of doubt, the late James Muhu Kangari was the father of the applicant’s deceased husband, Joseph Kangari Muhu.



2. The applicant contends that her deceased husband together with his deceased father co-founded the 2nd respondent Company ("the Company"), which operates primarily in the building and construction industry. The applicant asserts that, at the time of her husband's passing, he held 1,250 ordinary shares, representing 50 percent of the issued and fully paid ordinary shares of the Company.
3. The applicant also claims that after the Court confirmed her grant, her late husband's shares in the Company were transmitted to her by operation of law, to hold in trust for the beneficiaries of the estate. She asserts that despite this, the respondents have failed to transfer these shares to her, refused to pay the outstanding dividends owed to the estate of her late husband, and have not issued share certificates in her name.
4. The applicant states that, since the death of her husband in 2012, the Company has failed to hold any Annual General Meetings. If any such meetings were conducted, the estate of her late husband was not notified. Furthermore, the applicant highlights that the estate has not received any director's reports, dividends, or financial statements pertaining to Kilimambogo House, located on LR No. 2xxx/xxx0 (hereinafter referred to as "the subject property"), which the Company manages. These omissions have led to the current dispute before the Court and prompted the application dated 18th June 2024.
5. The application primarily seeks the release of the monthly income generated from the deceased's estate to the applicant, in proportion to the shares he held. Additionally, it prays for the appointment of an inspector, under Section 786 of the *Companies Act*, 2015, to investigate the Company's affairs and submit a report of the findings to this Honourable Court.
6. Additionally, the application seeks an order compelling the 1st respondent to provide the applicant with certified bank statements from 2012 to the present, as well as audited financial statements from 2012 to 2024 related to the subject property. The application further prays for orders for a forensic audit of the Company's financial records, including the declaration and disclosure of all rental income from the property and the identification of the current tenants.
7. The application is opposed through a replying affidavit sworn on 8th July 2024 by the 1st respondent, who is also a director of the Company. She acknowledges that her late husband, together with their son (the applicant's deceased husband), incorporated the Company on 5th January 1976, with each holding 1,250 shares. She states that she was appointed a Director on 2nd January 1990, followed by the appointment of her daughters as Directors on 6th February 1992.
8. The 1st respondent contends that, pursuant to a will left by her late husband and a subsequent Declaration of Trust executed by the applicant's husband, all property jointly held by the plaintiff's late husband with any of his children (including the Company) was transferred to Muhu Holdings Limited for management. To implement these wishes, the applicant and her children nominated one of her children, the 1st interested party, as a director of Muhu Holdings Limited. According to the respondents, this appointment paved way for the distribution of dividends and income from the subject property, which they assert has been paid in full.
9. The 1st and 2nd interested parties also opposed the application through a replying affidavit sworn on 19th September 2024. Their response reiterates the arguments presented by the 1st respondent, which I shall not regurgitate.
10. The core of the 1st respondent's argument is that the applicant is not a direct family descendant and, therefore, lacks the interest or locus to bring the suit before this Court. The 1st respondent further claims that the applicant forged documents to appoint herself as a director of the Company, and that



this appointment was nullified by the Registrar of Companies after the applicant failed to respond to allegations of fraud.

11. In order to substantiate this claim, the 1st respondent filed a Further Replying Affidavit to inform this Court of a judgment in which the applicant was convicted of four counts of forgery and sentenced to two years in prison. This judgment was issued in Kibera Criminal Case No. E2610 of 2024.

Analysis and Determination

12. The parties filed their respective submissions which I have considered together with the pleadings, the evidence on record and the authorities cited in support of respective cases.
13. Before addressing the substance of the application, it is essential to resolve the preliminary issue regarding the applicant's locus standi to bring the suit and the application before the Court as this determination will impact the reliefs sought by the applicant.
14. The *Black's Law dictionary* (8th edition) defines locus standi as 'the right to bring an action or to be heard in a given forum'. The applicant argues that her locus standi stems from her position as a co-administrator of her deceased husband's estate. While it is true that her role as co-administrator grants her certain rights and obligations related to the estate, this alone does not suffice to establish rights within the Company.
15. It is a fundamental principle of company law that a corporation is a separate legal entity, distinct from its shareholders, as established in the landmark case of *Salomon v Salomon & Co Ltd*, [1897] AC 22. This case set the precedent that the company exists independently from its members, with its own rights and liabilities. The principle means that any rights or claims involving the Company must be pursued through proper channels that respect its distinct legal status.
16. The distinction between personal rights in the administration of an estate and rights in corporate entities is therefore critical. The running and management of corporate remains subject to the principles laid out in the *Companies Act* as well as the memorandum and articles of association of the Company.
17. In other words, while an administrator may manage or distribute assets belonging to the deceased, they do not confer an automatic management role or direct participation in the operations of the company. Simon Goulding echoes this principle in his book *Company Law* (2nd ed) at page 8, where he writes:

“... because the company is a corporate body and a recognized legal entity, it survives the death of one, or even all, of the members...the shares of any deceased member are simply transferred to their personal representatives.”
18. Within the context of the current dispute before the Court, it must be established that the applicant's deceased husband was, indeed, a shareholder in the Company and that his shares were transferable to the applicant upon his death. This determination hinges on the provisions of the Company's memorandum and articles of association, which outline the rights and obligations of shareholders and the process for transferring shares in the event of death.
19. A fundamental principle of company law is that the memorandum and articles of association form what is known as a "statutory contract" between a company and its members. This contract is



binding and enforceable by both the company and its members. Section 30(1) of the *Companies Act* encapsulates this principle, stating:

“A company's constitution binds the company and its members to the same extent as if the company and its members had covenanted agreed with each other to observe the *constitution*.”

20. This statutory contract ensures that the internal governance and management of the company are conducted in accordance with the rules set out in its constitution. For the applicant to establish her locus standi in bringing this suit, it must be shown that the Company's articles of association recognize the transfer of shares upon a shareholder's death and allow the personal representative to assume the rights attached to those shares.
21. Against this background, I have carefully reviewed the evidence presented by both parties. It is undisputed that the 2nd respondent Company was incorporated on 5th January 1976 as a private limited company. One of the defining characteristics of a private limited company is the right of its members to control the transfer of shares. This is particularly relevant in assessing the applicant's locus standi, as the ability to transfer shares may directly affect her rights as a potential shareholder.
22. This characteristic is explicitly stated in article 3(c) of the company's articles of association, (at page 43 of the 1st respondent's documents). Article 3(c) underscores the principle that while shares can be transferred, such transfers are subject to any provisions and restrictions outlined in the company's governing documents. This provision aligns with the broader legal principle that private companies often maintain the right to restrict share transfers to preserve control over membership and protect the interests of existing shareholders.
23. To support her position, the applicant presented this Court with a record from the Registrar of Companies dated 17th July 2023, which indicates that the Estate of Joseph Kangari Muhu is listed as a shareholder in the 2nd respondent Company, holding 1,250 shares.
24. The documents presented by the 1st respondent portray a different narrative. According to the evidence, the 1st respondent's deceased husband ceased to be a director of the Company, and she was appointed as a director in his place on 2nd January 1990. Notably, she held this directorship alongside the applicant's deceased husband. This evidence is found at pages 16 to 19 of the 1st respondent's documents.
25. The evidence contained at pages 19 to 23 further demonstrates that four additional directors were appointed to the 2nd respondent Company on 6th February 1992. The four, all children of the 1st respondent, are Elizabeth Wambui Muhu, Virginia Wanjiru Muhu, Lucy Waithera Muhu, and Gaciku Kangari. Subsequently, the special resolution passed on 15th January 1995, which the applicant's deceased husband also signed, brought significant amendments to the articles of association of the 2nd respondent Company.
26. These amendments, particularly those to clause 14, establish crucial rules governing the inheritance and transfer of shares within the company. The full implications of these amendments must be examined to assess how they affect the applicant's claims to locus standi in the present suit.
27. Clause 14 of the articles of association was amended by inserting the following two clauses as evidenced at page 30 through to 33:

“Article 14(b):



On the death of any shareholder, the sons and/or daughters, of the deceased shall inherit the share(s) of the deceased provided that the Executors or Administrators of such estates, shall not have the right to vote in respect of such shares. Article (c):

A shareholder may transfer his/her share(s) to any member of the company who shall (except Serah Mweru Muhu) be a descendant of James Muhu Kangari.”

28. Clause 14(a) of the articles provided as follows:

“No share or part thereof shall be transferred to any person other than Serah Mweru Muhu who is not a descendant of James Muhu Kangari [deceased].”

29. The combined effect of these provisions is significant. The clauses confirm the 1st respondent’s position that while the applicant may oversee her deceased husband’s shares as a co-administrator of his estate, the Articles of Association make it clear that such administrative control does not equate to full shareholder rights.

30. Consequently, the applicant’s deceased husband also executed a declaration of trust effectively relinquishing any interest in the Company and confirming that his share was held in trust for his father, the 1st respondent’s deceased husband.

31. The implications of clause 14 of the Articles and the declaration of trust is that the Articles impose strict conditions on the transfer and inheritance of shares, emphasizing that only the sons or daughters of a deceased shareholder can inherit shares and explicitly barring executors or administrators from voting on behalf of such shares. This trust arrangement effectively precludes the applicant from holding her deceased husband’s shares as her own or asserting rights over them, as they were not intended to become part of the estate in a way that conferred direct shareholder rights to her.

32. Even if the applicant were to argue that her deceased husband’s estate holds an interest in the shares, Clauses 14(a) and 14(b) of the Articles already bar her from acting as a shareholder or participating in company management. In any case, the consent of 17th July 2019 appearing at page 61 which was executed by the applicant, confirms her agreement to the nomination of the 1st interested party as a director in Muhu Holdings Limited, to represent her deceased husband’s stake in the Company.

33. By consenting to this appointment, the applicant effectively ceded any claim to direct involvement in the Company’s governance or decision-making processes. The 1st interested party, as the designated representative, would therefore be the only person with locus standi to bring an application related to the deceased husband’s shares or stake in the Company before this Court.

34. Finally, I note that the applicant has not refuted the claims of forgery of the Company records that have been presented by the 1st respondent. In the absence of any rebuttal before the Registrar of Companies and before this Court, the position of the Registrar addressed in the letter dated 31st May 2022 found at page 132 of the 1st respondent’s documents remains.

35. The letter confirms at paragraphs 8 and 9 as follows:

“By this letter, therefore, the Registrar notifies all the parties involved that the changes which took place on or about the 14th of February 2014, together with all the accompanying documents which led to change of directorship complained of have been expunged from our Register. ... That the consequence of 8 above is that the company ownership and directorship shall revert to the position before the impugned changes. ...”



36. The letter then goes on to list the directors and shareholders of the 2nd respondent as Serah Mweru Kangari (the 1st respondent); Joseph Kangari Muhu; Elizabeth Wambui Muhu; Virginia Wanjiru Muhu; Lucy Waithera Muhu; Gaciku Kangari. Notably, the applicant has also remained silent regarding the evidence submitted pertaining to the judgment in Kibera Magistrates Criminal Case No. E2610 of 2021, where she was found guilty on four counts of forgery, relating to the present matter.

Disposition

37. Accordingly, I find that the applicant lacks the necessary locus standi to bring this matter before the Court. She is neither a director nor a shareholder in her own right, nor in her capacity as the administrator of the estate of the late Joseph Kangari Muhu. Consequently, without proper standing, the reliefs sought in the application cannot be granted. The application dated 18th June 2024 is therefore struck out, with no orders as to costs.

DATED, SIGNED AND DELIVERED IN NAIROBI THIS 8TH DAY OF NOVEMBER 2024.

F. MUGAMBI

JUDGE

