



**Kabiri & 3 others v Kungu; Kuka Investments Limited & another (Interested Parties)
(Petition E020 of 2023) [2024] KEHC 16115 (KLR) (16 December 2024) (Judgment)**

Neutral citation: [2024] KEHC 16115 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
PETITION E020 OF 2023
HM NYAGA, J
DECEMBER 16, 2024
IN THE MATTER OF: KUKA INVESTMENTS LIMITED
AND
IN THE MATTER OF: THE COMPANIES ACT, NO. 17 OF 2015,
PART XXIX-PROTECTION OF MEMBERS AGAINST
OPPRESSIVE & PREJUDICIAL CONDUCT**

**AND
IN THE MATTER OF: THE COMPANIES ACT, NO. 17 OF 2015, SECTIONS 101,
103, 114, 128, 130, 133, 134,138,142,146,238,280,323,504,662,666,727,780 & 782**

BETWEEN

**RITA MUTHONI KABIRI 1ST PETITIONER
STEPHEN KUNGU KAGIRI 2ND PETITIONER
STEPHEN KUNGU KAMAU 3RD PETITIONER
STEPHEN KUNGU KAMAU 4TH PETITIONER**

AND

KAGIRU KUNGU RESPONDENT

AND

**KUKA INVESTMENTS LIMITED INTERESTED PARTY
REGISTRAR OF COMPANIES INTERESTED PARTY**



JUDGMENT

Introduction

1. The Petitioners, Rita Muthoni Kagiri, Stephen Kungu Njoroge, Stephen Kungu Kamau and Stephen Kung'u Kamau describe themselves as female and males adults and residents of Nairobi County.
2. The Respondent, Kagiri Kungu, is described as a male adult and the sole director of Kuka Investments Limited.
3. The 1st Interested party, Kuka Investments Limited is described as a private company limited by shares incorporated on 6th January, 1981 under the [Companies Act](#), Cap 46 Laws of Kenya (Repealed) under Certificate of incorporation Number C.21834.
4. The 2nd Interested party is the Registrar of Companies responsible for business/ company registrations and charged with, among other, maintenance of various statutory records under the [Companies Act](#) and enforcing compliance with the laws administered by the Registrar.

The Petitioner's Case

5. The Petitioners commenced the petition herein by filing a petition dated 20th September, 2023, wherein they are seeking for the following orders: -
 - i. A declaration that the affairs of Kuka Investments Limited have been conducted in a manner that is oppressive and unfairly prejudicial to the interest of the Petitioners.
 - ii. An order be issued directing the Respondents and the Company to register the Petitioners as shareholders within 30 days.
 - iii. A mandamus does issue against the Respondent compelling him to within 30 days release to the petitioners all financial records, bank statements, management accounts, audited accounts, sales ledger, profit and loss account and any other relevant documents for the period between January 2015 and August 2023.
 - iv. An order be issued directing the sole director of the company, Kagiri Kungu, to convene an Annual General Meeting within 45 days of the date of the court order failing which the petitioners be allowed to convene the meeting.
 - v. An order be issued directing the Company to regularize all filing requirements and compliance under the [Companies Act](#) and file returns.
 - vi. An Order be issued directing the Company to appoint additional directors reflective of the shareholding structure of the Company.
 - vii. An Order be issued directing the company to table and discuss the audited financial statements for the last 5 years at the Annual General Meeting and distribute all dividends, interest and other advantages from 1st January 2018 to date.
 - viii. The above intended general meeting be supervised by the Registrar of companies or a duly appointed representative to ensure compliance with the [Companies Act](#) and the Regulations thereunder.
 - ix. Such other orders as the court may deem fit in the interests of Justice.



- x. The costs of the suit and interest thereon on a full indemnity basis until payment in full.
6. The petition is supported by the petitioners' supporting affidavits sworn on 20th September, 2023 and 19th September 2023 respectively and the documents attached thereto.
7. A brief background to the Petitioners' case is that Kuka Investments Ltd, the 1st interested party herein, is a family company and its registered office is situated at the property known as L.R No. 8836/1174 in Nakuru. That the authorized share capital of the company is KES 2,500,000 divided into 2,500 ordinary shares of KES 1000 each and out of these, 1114 shares were issued as follows: -

Name	Shares	Status
Stephene Kungu Kagiri	523	Deceased
Kagiri Kungu	55	Alive
Grace Nyambura Kungu	191	Deceased
Martha Wanjiru Kungu	70	Deceased
Mark Njoroge Kungu	55	Deceased
Sera Wanjiku Kungu	55	Alive
Francis Ndegwa Kungu	55	Alive
David Nganga Kungu	55	Alive
Kamau Kungu	55	Deceased
Total	1114	

8. The Respondent, Kagiri Kungu, is the current sole Director with 55 ordinary shares.
9. Stephen Kungu Kagiri and Grace Nyambura Kungu were Directors and Shareholders of the Company with Ordinary shares of 523 and 191 respectively and they passed away in the year 2015 and 2021 respectively.
10. The 1st and 2nd Petitioners/Applicants are joint beneficiaries of 55 ordinary shares in the company which were owned by the Late Michael Ryan Kung'u alias Mark Njoroge Kung'u alias Michael Njoroge Kung'u at the time of death on 2nd March, 2002 while the 3rd and 4th Petitioners are joint beneficiaries of 55 Ordinary shares in the company which were owned by the Late James Kamau Kung'u alias Kamau Kungu alias Kamau Kungu issued herein at the time of his death in 2001.
11. It is the petitioners' averment that upon the demises of Grace Nyambura Kungu and Stephen Kungu Kagiri, the number of the directors fell below the minimum number as provided under Article 88 of the Company's Articles of Association and as such all actions undertaken by the Board from the date of their demise were unlawful and ultra vires as the Board was not properly constituted.
12. The petitioners aver that pursuant to Article 110 of the Company's Articles of Association, only a quorate board is competent to exercise the powers exercisable by the Board and the only powers that



the Board as presently constituted can lawfully exercise is to convene the General Meeting for purposes of nominating and appointing additional directors.

13. The Petitioners aver that *the constitution* of the board should be reflective of the shareholding structure.
14. They aver that despite requests, they have not received any audited or unaudited financial statements from the 1st interested party or from the Respondent.
15. The petitioners aver that the company's Directors have not kept proper accounts with respect to all monies received and expended by the company as well as a schedule of the Company's assets and liabilities contrary to Article 144 of the Company's Articles of Association, Company has not been audited at least once a year as required under Article 150 of the said company article, and accounts have never been audited, presented and approved by the Annual General Meeting for the last 10 years.
16. The petitioners state that the listed filings have not been undertaken and that this omission amounts to a neglect of the Director's duty and exposes the company to undesirable consequences such as being indicted for being unlawfully constituted or operating outside the confines of the law.
17. That in the intervening period, the petitioners having perused the tax returns from 2015 to 2022 believe that the sole director is stripping, wasting, alienating or otherwise unlawfully dealing with the assets of the company to its detriment and that of members. That in 2015 the taxable income filed was Ksh. 23,961,922 while in 2022 the taxable income filed was a mere Ksh. 463,112. Therefore, within 7 years only, the percentage decline is 98.07%.
18. The Petitioners contend that by failing to transmit the deceased's shares, dividends and interests, the Respondent is violating their constitutional rights to property guaranteed under Article 40 of *the Constitution*.
19. The petitioners enumerated the Rights of the Company and their rights that have been violated by the respondent as follows;
 - a. Right to receive notice of board meetings.
 - b. Right to attend board meetings through video conferencing or audio-visual means or electronic means.
 - c. Excommunicating the petitioners thereby denying them the right to summon a board meeting.
 - d. Denying the petitioners their entitlements to receive agenda and notes on agenda of the business of board meetings.
 - e. Denying the petitioners a right of recorded minutes of the board.
 - f. Denying the petitioners right to inspect all books of accounts, audited financial statements for the years 2015 to 2023, the management accounts as at August,2023, the aged debtors list as at 30th August,2023 and confirmation of any outstanding debt facilities for the period 31st December,2022 and 30th August,2023.
 - g. Denying the petitioners the right to information related to the company.
 - h. Failure to hold annual general meeting in compliance with Article 53 of the Company's Articles of Association.
 - i. Inadequate number of directors contrary to Article 88 of the Company's Articles of Association.



- j. Non-presentation of financial statements in accordance with Article 144 and 150 of the Company's Articles of Association.
 - k. Non-registration of shareholders and distribution of dividends in compliance with Article 46 and 48 respectively of the Company's Articles of Association.
 - l. Failure to comply with legal filings.
20. From the foregoing the petitioners contend that the Respondent is in breach of their statutory and fiduciary duties owed to the shareholders. They particularized breach of statutory and fiduciary duty as follows: -
- a. Disregarding duty to promote the success of the company by failing to consider the interests of shareholders and long-term consequences of failing to include the beneficiaries of the deceased shareholders, which may expose the company to liability under the Act.
 - b. Disregarding the duty to promote the success of the company by maliciously withholding information without valid and procedural resolution.
 - c. Disregarding the duty to promote the success of the company by acting as between directors and members of the company.
 - d. Disregarding the duty to promote the success of the company by creating acrimonious and toxic environment within the shareholders.
 - e. Disregarding the duty to promote the success of the company by disregarding the procedural legal foundations under the *companies act* regarding the appointment of directors and thereby portraying the company, its directors and internal operations as chaotic, confused and mismanaged.
21. The petitioners aver that the foregoing show that the affairs of the 1st interested party are being conducted in a manner prejudicial to interests of the company and shareholders including them.
22. The 2nd Petitioner Stephen Kungu Njoroge through his supplementary affidavit on 20th November, 2023 avers that the Respondent is dissipating assets across related companies under his control and enriching himself at the expense of the company's shareholders.
23. He asserts that as a result of the other Director's wastage, their grandmother Grace Nyambura who was the majority shareholder/director before her demise, was necessitated to solely form a company as the sole director to collect proceeds which ordinarily would be due to the company herein.
24. That their grandmother transferred the revenue collection and management of one of the properties Ambassador Court to her Company GNK Gracie Holdings Limited and her office at Kuka Investment LTD which was situated at Luthuli House office Mezzanie 2 to Ojjo Plaza office GF6 which was managed by the 2nd Petitioner.
25. He deposes that due to wastage again, their said grandmother decided to open her own account where she was a sole signatory under GNK Gracie Holdings Limited Account No. 2043237341 to stop wastage in the Kuka Account.
26. That upon her passing on, the respondent decided to reverse the instructions of the tenants to pay rent back to the Kuka Account No. 0751876955 as of 1st February, 2022.



27. He avers that he transferred the files and management to the respondent through one of his workers that the respondent had sent as he had already started frustrating him by telling the guards at ambassador court not to allow him to enter the premises.
28. It is his averment that the respondent went ahead to transfer all the money he had helped to collect from GNK Gracie Holding Account 2043237341 amounting to 20 million to FDA's and the account was closed by the bank and on finding out why the bank closed it stated that the account was closed by mistake.
29. He avers that the respondent is now the main signatory in the account 0751876955 with no one to check on his excesses hence all the wastage.
30. That the foregoing actions, plus many more, show that the affairs of the company are being conducted in a manner prejudicial to the interest of all shareholders.
31. He avers that the business run by the Company herein are; Nakuru LR 3/507- Rentals; Nakuru LR 3/506- Rentals; Kunste Hotel; Luthuli House (Rentals); Grace House (Rented out); Ambassador Court (Rentals); & Shalom Grace Church, Ngara (with Rentals), and that none of the petitioners know the status of the businesses as they are shrouded in secrecy.
32. He avers that the company herein is at a crossroads, its future hangs in the balance, and the fate of its shareholders and employees' rests in the hands of Mr. Kagiri who is doing everything to run it down, ending a long legacy left by his grandfather.

Respondent's Case

33. The respondent opposed the petition via his replying affidavit sworn on 24th July, 2024.
34. He depones that the petition is vexatious, scandalous, malicious, self-serving, speculative and a non-starter and he urged this court to dismiss it with costs.
35. He avers that it cannot be said that the shares held by the deceased's shareholders were transmitted to the petitioners without a duly executed share transfer document by or on behalf of the transferor and transferee and the allegation that the shares were deemed transmitted is therefore unfounded and has no legal basis.
36. He states that he has not willfully neglected to regularize the position in the company as there have been attempts to appoint her sister Sera Kung'u as one of the directors but the process is yet to be completed.
37. He depones that he could not invite the petitioners for the Annual General meeting for reasons that at the time of the last general meeting particularly in 2021 and 2022, the petitioners were not members of the company and they had not obtained letters of administration.
38. He avers that the claim that all actions undertaken by the board from the date his mother died are unlawful and ultravires is outrageous as no evidence has been placed before court to show that the alleged decisions and/or actions have been detrimental to the company and would not be ratified by the company if the board was properly constituted.
39. He avers that there are up to date books of accounts and all reporting and annual returns are done every year and as the petitioners' allegations are baseless and unmerited.
40. He contends that the revenue deficit has been occasioned by the Covid- 19 pandemic which affected the overall demand of the company's products and services, and the fact that the company stopped managing some properties that were given to some of his siblings as per his mother's wishes.



41. He avers that the company herein used to initially manage 5 apartments but now they manage one.
42. He contends that there is no evidence of his negligence, breach of duty or trust as a director, embezzlement of funds or plan to alienate company assets as alleged by the petitioners.
43. He states that the petitioners have failed to bring their case within the four corners of what is recognized in law as a derivative suit and that the pleadings manifestly show that the petitioners are pursuing what they mistakenly believe to be their personal entitlements in the company assets and not pursuing the interest of the company.
44. The Petition was canvassed through written submissions.

Petitioners' Submissions

45. The petitioners submitted that the Respondent breached Articles 88 and 110 of the Companies Article of Association and Section 142 of the Companies Act by failing to ensure that there were at least 2 directors acting for the company.
46. The petitioners submitted that decline in taxable income of the company shows that the Respondent as the sole director is stripping, wasting, alienating or otherwise unlawfully dealing with the assets of the company to its detriment and that of members.
47. They posited that the respondent has a fiduciary duty towards the company and its members. They relied on Section 143 of the Companies Act and the case of Ajay Shah v Deposit Protection Fund Board as Liquidator of Trust Bank Limited (In Liquidation) [2016] eKLR
48. They accused the Respondent of breaching Section 143 of the Companies Act by mishandling the company's assets.
49. They argued that the respondent breached Section 275 A (1) of the Companies Act and Article 53 of the Company's Article of Association by failing to hold a general meeting. To bolster their submissions, they relied on the case of Agricultural Development Corporation of Kenya Vs Nathaniel K. Tum & another [2014] eKLR where the court while addressing the importance of Annual General meeting observed as follows: -

“It bears repeating, that an Annual General Meeting serves two important purposes: in one sense as a mechanism for accountability to shareholders and the shaping of the business of the company; and in another sense as an act of compliance with the law. that an Annual general meeting serves two important purposes in one sense as a mechanism “
50. The petitioners submitted that the Respondent compromised the transparency and integrity of the company by denying them a chance to assess the audits and financial statements of the company.
51. They argued that the Respondent's failure to inform the registrar of the demise of the directors and failure to link the company on e-citizen which allows the company to update its records with the state, file annual returns and effect beneficial owner information were detrimental to the company.
52. The petitioners further submitted that the Respondent is non-compliant with Section 93 A of the Companies Act 2015 and the Companies (Beneficial Ownership Information) Regulations 2020 which mandate companies to file beneficial owner information as he failed to register the beneficial owners of the company.
53. The petitioners submitted that the Respondent conducted the affairs of the 1st Interested party in an oppressive and prejudicial manner towards them as he failed to register them as shareholders pursuant



- to Article 46 of the Articles of Association, failed to give them accounts pursuant to Article 144 of the Articles of Association, failed to account for dividends to the respective beneficiaries under the grant in accordance with Article 46 of the Articles of Association and failed to invite them to board or general meetings.
54. The petitioners posited that under Sections 628, 629, 635, 662, 709 and 710 of the *Companies Act*, the Respondent as the director of the company has a duty to provide them with the financial information of the company.
55. The petitioners argued that in order for the company to run effectively and lawfully it is important that an AGM is held and since the respondent has not previously called such a meeting, it is necessary this court intervenes and order for the same to be held. In support of this proposition, the petitioners relied on Article 88 of the company's Articles of Association and the case of *Seruji Limited v Savannah Cement Limited; Savannah Heights Ltd (Interested Party) (Miscellaneous Application E445 of 2021)* [2021] KEHC 26 (KLR) (Commercial and Tax) (10 September 2021) (Judgment)
56. On costs, the petitioners submitted that the same should be issued to them and paid by the Respondent and the 1st interested parties. To buttress their submissions, they referred this court to Section 27 of the *Civil Procedure Act* and the cases of Cecilia Karuru Ngayu v Barclays Bank of Kenya & another [2016] eKLR cited in the case of Republic v Rosemary Wairimu Munene, Ex-parte Applicant v Ihururu Dairy Farmers Co-operative Society Ltd, Judicial Review Application No 6 of 2024; Fanning V Murtagh [2008] IEHC 277; Carlisle & Cubria United Independent Supporter's Society Ltd Vs. CUFC Holdings Ltd.

Respondent's Submissions

57. The Respondent in his submissions reiterated his averments as per the Replying Affidavit.
58. The respondent submitted that the petition is unmerited.
59. He posited that the suit herein does not meet the threshold for a derivative suit action as the petitioners have not proven any form of negligence, default, breach of duty and breach of trust as required of a derivative suit. He relied on the case of Mohamedin Mohamed & Another vs Ibrahim Ismail Isaak & Another (2012) eKLR
60. The respondent argued that derivative action must be in the best interest of the company and addressing a problem facing the company and not any of the shareholder's interest. He posited that if a minority shareholder is dissatisfied with any action or omission of the company the then proper avenue is to file a personal action as opposed to a derivative action. In buttressing this position, the Respondent relied on the cases of Nextgen Office Suites Ltd & another v Netcom Investments Ltd & another; Shah Minakshi Navinchandra (Interested Party) [2021] eKLR; Njenga & 2 others v Ecobank (K) Limited & another (Civil Suit E484 of 2022) [2023] KEHC 17448 (KLR) (Commercial & Admiralty) (17 May 2023) (Ruling) & Kebenei v African Grain Care Equipment Limited & 2 others (Miscellaneous Civil Application E183 of 2022) [2024] KEHC 6193 (KLR) (31 May 2024) (Ruling)
61. The respondent prayed that the petition and costs to be borne by the Petitioners.

Analysis and determination

62. I have considered the petition, affidavit in support thereof and in opposition to the petition, submissions and authorities cited. In my considered opinion the issues that arise for determination are: -



1. Whether the petitioners are entitled to the orders sought.
2. Who should bear the costs of the petition?

Issue No.1

63. In my ruling delivered on 17th April 2024, I granted leave to the petitioners to proceed with this petition. Therefore, I will not revisit the issue again.
64. The petitioners pray for a declaration that the affairs of the 1st interested party has been conducted in a manner that is oppressive and unfairly prejudicial to the interest of the Petitioners.
65. They argued that in 2015 the taxable income was Ksh. 23,961,922/- while in 2022 it was a mere Kes 463,112/- and that within 7 years the percentage decline is 98.07%. The respondent has explained that the revenue deficit was occasioned by the Covid- 19 pandemic which affected the overall demand of the company's products and services, and company's cessation of ownership over certain properties that were given to some of his siblings as per his mother's wishes. To bolster this position, the respondent annexed copies of letters dated 1st December,2017 & 3rd September 2020 showing that the 1st interested party ceased to be the owners of Plots No. 209/2189 at Revenue Parklands and Astroart Holding Limited took over management and assignment of leases in LR 209/697/23, 24 and 25 at Luthuli House from the 1st interested party respectively. The Petitioners did not controvert this position. However, in their supplementary affidavit they accused the respondent of dissipating assets across related companies under his control enriching himself at the expense of the company's shareholders. I have considered the averments raised in this regard and I have also perused the annexed documents. I find that there is no evidence that the respondent misused, destroyed, negligently handled the property of the 1st interested party or used his position to unfairly enrich himself.
66. The petitioners also averred that none of them know the status of the aforesaid business run by the 1st interested party as they are shrouded in mystery. They did not adduce any evidence to demonstrate whether they have requested for the same and their request was declined by the Respondent.
- I therefore disregard the above averments by the petitioners.
67. However, I note the petitioners further contend that the Respondent conducted the affairs of the 1st Interested party in an oppressive and prejudicial manner towards them as he failed to register them as shareholders of the company and failed to account for dividends to the respective beneficiaries under the grant in accordance with Article 46 of the Articles of Association.
68. The respondent on his part argued that deceased shares cannot be transmitted to the petitioners without a duly executed transfer documents on behalf of transferor and transferee.
69. Section 780 (2) of the *Companies Act* provides that in this section, "member", in relation to a company, includes a person who is not a member of the company but is a person to whom shares of the company —
- a. have been transferred; or
 - b. have been transmitted by operation of law by dint of being beneficiaries of the deceased shareholders the respondent contended that this payer is for the personal benefits of the petitioners and not for the company.
70. By virtue of Section 780(2) of the *Companies Act* the shares in issue automatically transmitted to the petitioners by operation of law upon demises of their respective deceased shareholders.



71. The petitioners requested the Respondent to register them as such but he did not do so.
72. The petitioners pray that the Respondent and the 1st Interested party be ordered to register them as shareholders within 30 days. The respondent believes that this relief is for personal benefit of the petitioners. I disagree with him. Failure to register the petitioners as shareholders was oppressive and prejudicial. If this position is not regularized the petitioners will be denied their shareholder rights, such as voting, dividends, or participation in company decisions. By failing to register the petitioners as shareholders, the respondent in his capacity as the director failed in his duty to act in the best interest of the company and its shareholders. Pursuant to aforementioned Section 238(3) of the Companies Act, these prayers are for the protection of the petitioners as lawful members of the company against unfair prejudice by the Respondent. They are thus merited and they will issue.
73. The petitioners argue that they have not received any audited or unaudited financial statements from the company since the appointment of the current board and neither has an AGM conducted to that effect. They annexed a letter dated 14th July, 2023 addressed to the Respondent in which they requested to be furnished with all the financial statements as well as the books accounts of the company from the date of appointment of the Respondent to date.
74. The petitioners thus argued that the Respondent has grossly compromised the transparency and integrity of the company by not disclosing the financial information and audit reports to the shareholders.
75. The Respondent on his part submitted that he has already submitted the same and therefore this prayer should not issue. Indeed, the respondent annexed the financial statements for the year 2021 and 2022 in his replying affidavit dated 30th November, 2023. The petitioners have not raised any issue with these statements. These statements are only for two years i.e. year 2021 and 2022 yet the petitioners' request is for the period between January 2015 and August 2023. The respondent has not disclosed whether he has a challenge in obtaining the statements for 2015-2020. I find that the petitioners are entitled to the said accounts.
76. As for the request for financial statement for the year 2023, I find that the same was premature. This petition was filed in September 2023 and financial statements are typically required to be issued annually. As at that time the accounts would not have been due. The same will be availed to the petitioners once they have become shareholders.
77. Regarding prayer no. d, under Article 53 of the Company's Articles of Association, the company is mandated to hold a meeting annually. The petitioners averred that they have neither received notices of the meetings nor invited to any annual General Meeting either as administrators of the estate of the deceased or as beneficiaries to the deceased estate in accordance with said Article.
78. This court already observed in its earlier ruling that the petitioners herein were issued with grant of letters of administration intestate on 21st August, 2023 and 28th February, 2023 respectively and from the attached financial statements for the year 2021 and 2022 it was clear the meeting was held annually as envisaged by the above article. However, at that time the petitioners were not members of the company as they had not been conferred with a certificate of a confirmed grant. It therefore follows that the petitioners could not have been invited for the above meetings as they were not members of the 1st interested party. For the above reason, prayer no. d will not issue.
79. With regard to prayer no. e, the petitioners averred that directors are obligated to notify the Registrar of Companies of changes in the shareholder and director particulars and file the register of beneficial



- owners and that the Respondent has failed to undertake this filing thus exposing the company to potential legal consequences.
80. Article 46 of the Company's Article of Association provides that "any person becoming entitled to a share in consequence of the death or bankruptcy of a member may, upon such evidence as to his title being produced as may from time to time be required by the Directors, and subject as hereinafter provided, elect either to be registered himself as holder of the share or to have some person nominated by him registered as the transferee thereof".
81. The evidence on record shows that the petitioners requested the Respondent to register them as holders of their aforementioned respective shares in vain. In a letter dated 14th July, 2023 addressed to the Respondent, the petitioners requested to be registered as such pursuant to Article 46 of the Articles of Association. Similarly, the petitioners notified the Registrar of the current status of the shareholders and particularly their unsuccessful plea to have the Respondent register them in place of the deceased shareholders through their advocate's letters dated 20th July, 2023, 18th August, 2023 and email extract of 22nd August, 2023 and 3rd August, 2023. They also requested the Registrar to amend the register of the Company's members to reflect the said respective shares which devolved to them. There is no evidence that these have been done. Considering my position that the Petitioners automatically became members of the 1st interested party by operation of law upon death of their respective shareholders, the Respondent ought to have had them registered as shareholders pursuant to Section 780 (2) (b). In view of the foregoing, this prayer will issue. The respondent is directed to present all the requisite documents to the Registrar for the changes to be effected.
82. With respect to prayer no. f, Article 88 expressly provides that unless and until otherwise determined by the Company through an Ordinary Resolution, the Directors shall not be less than two in number. There is no evidence on record that the respondent has regularized this position in the company. He has explained that he has been in the process of regularizing the position by seeking to add his sister one Sera Kung'u as a director but failed to adduce evidence in support thereof. In this regard, the court finds this prayer plausible and the same is hereby allowed.
83. With respect to prayer no. g, the petitioners submitted that pursuant to the confirmation of grants issued to them and Article 46 of the Articles of association, they are entitled to receive dividends amongst other rights. They argued that they have not received any dividends that are rightfully theirs.
84. It is clear therefore that the petitioners Intent is to have an AGM held for purposes of distributing all dividends, interest and other advantages from 1st January 2018 to date to them. The petitioners being members of the 1st interested party are entitled to dividends if they are declared and unpaid by the company. The failure to pay dividends will fundamentally prejudice the petitioners. In the interest of justice, I find this prayer is merited.
85. The petitioners have not laid a solid basis in support of prayer no. h. In any event obedience of Court orders is not optional, rather, it is mandatory. Prayer no. h is thus unmerited and I disallow it.
86. As regards costs, the applicable principles are that costs follow the event. However, the award of the costs is also at the discretion of the Court. Section 27 of the *Civil Procedure Act* provides:

"(1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court or judge has



no jurisdiction to try the suit shall be no bar to the exercise of those powers: Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.”

87. The Petitioners have partially succeeded. I have also considered that the parties are one family. Bearing in mind these circumstances, I order that each party will therefore bear their own costs.

88. In light of the findings above, I hereby grant, the following orders:

1. The interested parties are hereby ordered to register the Petitioners as shareholders within 45 days from the date hereof. The respondent is to present all the requisite documents for that purpose within the next 21 days from the date hereof.
2. An order of mandamus is hereby issued against the Respondent compelling him to within 45 days from the date hereof, release to the petitioners all financial records, bank statements, management accounts, audited accounts, sales ledger, profit and loss account and any other relevant documents for the year 2015 and 2020.
3. The Respondent and the 1st Interested party are hereby ordered to regularize all filing requirements and compliance under the Companies Act and file returns.
4. An Order is issued directing the Company to appoint additional directors reflective of the shareholding structure of the Company. The respondent to act accordingly within 45 days.
5. An Order is hereby issued directing the 1st interested party and the respondent to table the audited financial statements for the last 5 years at the next Annual General Meeting and distribute all dividends, interest and other advantages from 1st January 2018 to date.
6. Each party to bear their own costs.

SIGNED AND DELIVERED VIRTUALLY AT MERU THIS 16TH DAY OF DECEMBER 2024.

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**H. M. NYAGA,
JUDGE.**

In the presence of;

