



**Republic v Registrar of Companies & another; Kenagro Suppliers Limited (Exparte) (Application E056 of 2024) [2024] KEHC 15187 (KLR) (Judicial Review) (3 December 2024) (Judgment)**

Neutral citation: [2024] KEHC 15187 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
JUDICIAL REVIEW  
APPLICATION E056 OF 2024  
J NGAAH, J  
DECEMBER 3, 2024**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**REGISTRAR OF COMPANIES ..... 1<sup>ST</sup> RESPONDENT**

**HONOURABLE ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**KENAGRO SUPPLIERS LIMITED ..... EXPARTE**

**JUDGMENT**

1. The application before court is a motion dated 3 May 2024, expressed to be brought under Order 53 of the Civil Procedure Rules. It seeks the following orders:

- “ 1. That an Order of Certiorari to remove into the honorable court and quash the decision of the Respondent given on 27<sup>th</sup> November, 2023, of neglecting and/ or refusing to reserve the business name Kengaro East Africa Limited be and is hereby issued.
- 2. That an Order of Mandamus directed to the Respondent to compel it to reserve and register the business name Kenagro East Africa- Limited and to issue the Ex parte applicant with the necessary certificates of registration be and is hereby issued.
- 3. That costs be to the Ex-parte applicant.



4. Any other order that is just and equitable.”
2. The application is based on a statutory statement dated 27 February 2024 and an affidavit sworn on even date by Mr. John Muhia verifying the facts relied upon.
3. According to Mr. Muhia, he is a director of the applicant company and that the company has previously traded under the business name, Kenagro East Africa Limited, having previously changed its name from Kenagro Suppliers Limited.
4. The change was based on the applicant’s special resolution dated 15 November 2012, to effect a change of name of the applicant from Kenagro East Africa Limited back to Kenagro Suppliers Limited. The resolution was lodged with the 1<sup>st</sup> respondent who effected the change and issued the applicant with a Certificate of change of name dated 17 December 2012.
5. The applicant, seeking to change its name back to Kenagro East Africa Limited, for the reason given by the applicant as “harmonization of its business name across East Africa”, made the application for change of name. The application was, however, rejected by the 1<sup>st</sup> respondent, on 17 November, 2023. It is alleged, in rejecting the application, the 1<sup>st</sup> respondent did not give any reason for his decision.
6. The respondents did not file any response to the application. That notwithstanding, the applicant still bears the burden of persuading the court to exercise its discretion in the applicant’s favour and grant the judicial review reliefs sought.
7. Although it has been sworn that the 1<sup>st</sup> respondent has not given any reason why he rejected the reservation of the applicant’s proposed name, there is exhibited to the applicant’s affidavit copies of communication from the 1<sup>st</sup> respondent showing that the name is not available because there exists, in the companies register, a company of a similar name. To be precise, in the 1<sup>st</sup> respondent’s letter dated 19 January 2023, addressed to the applicant, the applicant is informed that the reservation of the name “Kenagro East Africa Limited” cannot be made because, apparently, a company by similar name exists in the register.
8. Rather than provide an alternative name, the applicant appears to have presented the same name for reservation a few months later. In an email dated 23 March 2023, the 1<sup>st</sup> respondent informed the applicant that the name was not available. The 1<sup>st</sup> respondent wrote as follows:

“Subject: Reservation of the Name Kenagro East Africa Limited-NS-GSHRL

John,

Hope this email finds you well. The above matter refers.

Kindly note that the proposed names are not available for registration and the allocation of the names would be in contravention of the provisions of the [Registration of Business Names Act](#) and the Company Act, 2015; Kenagros Limited CPR/2010/82518 this was registered first in place hence your suggestion not available.”

9. Section 65 of the [Companies Act](#), 2015 provides for change of name of a company. It states as follows:
  65. Change of name: registration and issue of certificate of change of name
    - (1) On receiving a notice of a change of company’s name and on being satisfied—
      - (a) that the new name complies with the requirements of this Act; and



- (b) that the requirements of this Act and any relevant requirements of the articles of the company, with respect to a change of name are complied with, the Registrar shall enter the new name on the register in place of the former name.
- (2) As soon as practicable after registering the new name, the Registrar shall issue a certificate of change of name to the company.
10. Thus, the Registrar is enjoined to enter a company's new name on the register in place of its former name on condition that the new name complies with the requirements of the Companies Act and the requirements of the Act together with the articles of association of the company in issue, with respect to change of name, have been complied with.
11. The logical question that then follows is whether, in rejecting the reservation of the applicant's proposed name, the Registrar of Companies considered the provisions of the Act on whether the proposed name complied with the Act and whether the requirements of the Act with respect to names or change of names of the company were complied with.
12. One of the provisions in the Companies Act relevant to the answer to this question, is section 57 (1) of the Companies Act. This provision of the law prohibits the Registrar of Companies from registering a company that bears a name similar to that of an existing company. It reads as follows:
57. Name not to be the same as another in the index
- (1) The Registrar shall not register a company under this Act by a name that is the same as another name appearing in the index of company names.
13. Besides similarity of names, regulation 11 of the Companies (General) Regulations goes further to prescribe circumstances in which a company name will not be registered. It reads as follows:
11. Circumstances in which a company name will not be registered
- A company name may not be registered if—
- (a) it is the same as a name appearing in the Registrar's Index of Company Names, Business Names, Limited Liability Partnerships or Partnerships;
- (b) it has a close phonetic resemblance to the name of company, business name, limited liability partnership or partnership that is already registered;
- (c) it differs from the name of another company, business name, limited liability partnership or partnership that is already registered only by the addition of the name of a place, locality or region within Kenya;
- (d) it is identical to, or closely resembles, that of a name that has been reserved by the Registrar for use in connection with a proposed company, business name, limited liability partnership or partnership;
- (e) it is identical to or closely resembles, the name of a company or limited liability partnership that has been dissolved, or has been struck off the register of companies or register of limited liability partnerships, or the entry of a business in the register of business names or partnerships kept under the Registration of Business Names Act, 2015 has been cancelled;
- (f) it is the same as a name of a body corporate or established under a written law;



- (g) the Registrar believes on reasonable grounds that its use would involve the commission of a criminal offence; or(h)the Registrar believes on reasonable grounds that it is offensive or undesirable or contrary to public interest. (Emphasis added)

14. As noted earlier, the Registrar of Companies was clear with the applicant that he could not reserve the proposed name because it would be contravention of the provisions of the *Companies Act*. Considering that the Registrar was specific that the proposed name was similar to that of an existing company, he must have had in mind section 57(1) of the Act as read with regulation 11(a) and (b),
15. Once it is apparent that the Registrar's decision was informed by provisions of the law, the question of whether he was right or wrong is beyond this Honourable Court. To be precise, it is not up to this court, in exercise of its judicial review jurisdiction, to determine whether indeed the applicant's proposed name is similar to a name of an existing company as contemplated under section 57(1) of the Act and regulations 11(a) and (b) of the Companies (General) Regulations.
16. Judicial review, as it were, is about the process by which a decision is arrived at and not the merits of the decision itself. A judicial review court has no jurisdiction to substitute its own opinion for that of a tribunal. It is not part of the purpose for judicial review to substitute the opinion of the judiciary or of individual judges for that of the authority constituted by law to decide the matters in question (see Lord Hailsham in *Chief Constable of the North Wales Police versus Evans* (1982) 1 WLR 1155 at 1160F).
17. It has also been held in *R versus Entry Clearance Officer, Bombay ex p Amin* (1983) 818 at 829 (B-C) per ord Fraser that judicial review is entirely different from an ordinary appeal. It is made effective by the court quashing an administrative decision without substituting its own decision, and it is to be contrasted with an appeal where the appellate tribunal substitutes its own decision on the merits for that of the administrative officer.
18. The same point was emphasised in *Chief Constable of North Wales Police versus Evans* (supra) where Lord Brightman said at page 1173F and 1174G that:

“Judicial review is concerned, not with the decision, but with the decision-making process. Unless that restriction on the power of the court is observed, the court will in my view, under the guise of preventing the abuse of power, be itself guilty of usurping power...Judicial review, as the words imply, is not an appeal from a decision, but a review of the manner in which the decision was made.”

Lord Hailsham stated in the same case that:

“The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches on a matter which it is authorised by law to decide for itself a conclusion which is correct in the eyes of the court.” At page 1161A.

19. On his part Lord Roskil said in *R versus Inland Revenue Commissioners ex parte National Federation of Self-Employed and Small Businesses Ltd* 1982(AC) 617 at 633C that:

“The court must not cross that boundary between administration whether good or bad which is lawful and what is unlawful performance of a statutory duty.”



20. And back home in *Pevans East Africa Limited & Another versus Chairman, Betting Control & Licensing Board & 7 others* (2018) eKLR it has been held that:

“Where *the Constitution* has reposed specific functions in an institution or organs of state, the court must give those organs sufficient leeway to discharge their mandate and only accept an invitation to intervene when those bodies are demonstrably shown to have acted in contravention of *the Constitution*, the law or that their decisions are so perverse, so manifestly irrational that they cannot be allowed to stand under the principles and values of our Constitution.”

21. In light of these decisions, I am unable to fault the respondent’s decision on any of the grounds of judicial review. In any event, apart from repeating the depositions made in the affidavit verifying the facts relied upon, the applicant has not identified any particular ground for judicial review upon which its application is based. Lest we forget, the grounds for judicial review were enunciated in *Council of Civil Service Unions v. Minister for the Civil Service* [1985] A.C. 374,410 where Lord Diplock explained them as follows:

“My Lords, I see no reason why simply because a decision-making power is derived from a common law and not a statutory source, it should for that reason only be immune from judicial review. Judicial review has I think developed to a stage today when without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds upon which administrative action is subject to control by judicial review. The first ground I would call “illegality,” the second “irrationality” and the third “procedural impropriety.” That is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of “proportionality” which is recognised in the administrative law of several of our fellow members of the European Economic Community; but to dispose of the instant case the three already well-established heads that I have mentioned will suffice.

By “illegality” as a ground for judicial review I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided, in the event of dispute, by those persons, the judges, by whom the judicial power of the state is exercisable.

By “irrationality” I mean what can by now be succinctly referred to as “Wednesbury unreasonableness” (*Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation* [1948] 1 K.B. 223). It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. Whether a decision falls within this category is a question that judges by their training and experience should be well equipped to answer, or else there would be something badly wrong with our judicial system. To justify the court’s exercise of this role, resort I think is today no longer needed to Viscount Radcliffe’s ingenious explanation in *Edwards v. Bairstow* [1956] A.C. 14 of irrationality as a ground for a court’s reversal of a decision by ascribing it to an inferred though unidentifiable mistake of law by the decision-maker. “Irrationality” by now can stand upon its own feet as an accepted ground on which a decision may be attacked by judicial review.



I have described the third head as “procedural impropriety” rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. This is because susceptibility to judicial review under this head covers also failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice. But the instant case is not concerned with the proceedings of an administrative tribunal at all.

22. To a great degree, though not expressly stated, these grounds are now codified in the *Fair Administrative Action Act*, in particular section 7(2) of the Act. This section reads:

7. Institution of proceedings.

7.

(2) A court or tribunal under subsection (1) may review an administrative action or decision, if-

(a) the person who made the decision-

(i) was not authorized to do so by the empowering provision;

(ii) acted in excess of jurisdiction or power conferred under any written law;

(iii) acted pursuant to delegated power in contravention of any law prohibiting such delegation;

(iv) was biased or may reasonably be suspected of bias; or

(v) denied the person to whom the administrative action or decision relates, a reasonable opportunity to state the person's case;

(b) a mandatory and material procedure or condition prescribed by an empowering provision was not complied with;

(c) the action or decision was procedurally unfair;

(d) the action or decision was materially influenced by an error of law;

(e) the administrative action or decision in issue was taken with an ulterior motive or purpose calculated to prejudice the legal rights of the applicant;

(f) the administrator failed to take into account relevant considerations;

(g) the administrator acted on the direction of a person or body not authorised or empowered by any written law to give such directions;

(h) the administrative action or decision was made in bad faith;

(i) the administrative action or decision is not rationally connected to-

(i) the purpose for which it was taken;

(ii) the purpose of the empowering provision;



- (iii) the information before the administrator; or
- (iv) the reasons given for it by the administrator;
- (j) there was an abuse of discretion, unreasonable delay or failure to act in discharge of a duty imposed under any written law;
- (k) the administrative action or decision is unreasonable;
- (l) the administrative action or decision is not proportionate to the interests or rights affected;
- (m) the administrative action or decision violates the legitimate expectations of the person to whom it relates;
- (n) the administrative action or decision is unfair; or
- (o) the administrative action or decision is taken or made in abuse of power.

23. Any of these grounds prescribed by the Act can easily be canvassed under any of three heads illegality, irrationality procedural impropriety and, of course, such other grounds that have gained traction with time as further grounds for judicial review. Even in enunciating the traditional grounds for judicial review, Lord Diplock was quick to add that further development of this area of law may yield further grounds on a case by case basis.
24. The principle of proportionality, for instance, is an example of the latter development of judicial review grounds. However, I would be hesitant to conclude that what we now refer as to the statutory grounds in section 7(2) could be seen in this light since, as I have noted, they are more or less, components of the traditional grounds of judicial review except that they now have a statutory underpinning.
25. The applicant has not identified any of these grounds in support of its application. It worth noting that Order 53 Rule 1(2) of the Civil Procedure Rules states in rather peremptory terms that the statement accompanying the application must contain, among other things, the grounds upon which the application is made. It reads 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).
26. And Order 53 Rule 4(1) states, also unambiguously, that no grounds should be relied upon except those specified in the statement accompanying the application for leave.
27. It follows that without specifying the grounds for judicial review an application for judicial review reliefs would be non-starter. For the foregoing reasons, I do not find any merit in the applicant's application. It is hereby dismissed. I make no order as to costs.

**SIGNED, DATED AND POSTED ON CTS ON 3 DECEMBER 2024**

**Ngaah Jairus**

**JUDGE**

