REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

JUDICIAL REVIEW DIVISION

MISCELLANEOUS APPLICATION NO. 105 OF 2019

REPUBLIC.....APPLICANT

-AND-

THE REGISTRAR OF COMPANIES & 2 OTHERS.....RESPONDENTS

AND

SCHINDLER LIMITED.....*EX PARTE* APPLICANT

JUDGMENT

Introduction

1. The *ex parte* applicant seeks an order of *Mandamus* to compel the first Respondent to strike out the third Respondent from the Register of Companies. It also seeks an order of *prohibition* to prohibit the first Respondent or its agents, servants and or employees from continuing, sustaining or proceeding with registration of entities bearing its name or names that are strikingly similar which violate its Registered Trademarks and Licenses. Lastly, it prays for costs of the case.

Factual Matrix

2. A reading of the pleadings filed by the applicant and the first Respondent leaves no doubt that the facts which triggered these proceedings are essentially common ground or uncontroverted. There is no contest that Schindler Limited, the *ex parte* applicant was registered on **15th** February 1989 under the Companies Act[1] (repealed). It is undisputed that upon being registered, it was issued with a Certificate of Incorporation. It is also admitted that vide Certificate of Incorporation number **CPR.2014/172434** issued on **23rd** December 2014, the Registrar of companies registered **Schindler United Elevator (Kenya-China) Limited**, the third Respondent herein under the repealed Act.

3. The applicant contends that the name **Schindler** is a valid Registered Trademark belonging to Schindler Holding AG, its holding company. It states that the third Respondent was registered solely with the intention of ridding on its and its holding company's goodwill, and that at its own demand and instance, the first Respondent exercising its statutory powers under Section **58** of the Companies Act, 2015[2] (herein after referred to as the Act) wrote to the third Respondent directing it to change its name but to date it has failed to effect the said change.

Legal foundation of the application

4. The application is predicated on the grounds that the first Respondent's failure to strike out the third Respondent from the Register of companies has prejudiced its legal rights, that the refusal is in bad faith, a violation of its legitimate expectation and abuse of the first Respondent's powers.

First and second respondent's Replying affidavit

5. Joyce Koech, an Assistant Registrar of Companies swore the replying dated **25th** November 2019. She deposed that the Registrar of companies is the regulator and custodian of all companies' record and it is mandated to implement the Companies Act[3](the Act).

6. She deposed that the first Respondent received a letter dated **22nd** September 1989 from the applicant drawing its attention to the

registration of the third Respondent whose name is similar to the applicant's. She deposed that the third Respondent was registered inadvertently and that the registration was no longer tenable within the meaning of section **20(2)** of the Act and section **58** of the repealed act as read with regulation **11(a) (b) (c)** & **13** of the *Companies (General) Regulations, 2015* made pursuant to section **59** of the repealed Act. She deposed that section **57** of the repealed Act provides that a name ought not to be the same as another in the index of the companies registered.

7. M/S Koech also deposed that section **58 (1)** of the repealed Act empowers the Registrar of Companies to direct change of name in case of similarity to existing name while section **58(2)** provides that the same can be done within the extended time that the Registrar may specify in writing.

8. Additionally, M/S Koch deposed that under section **58 (5) (6)** and **(7)** of the repealed Act, the office of the Registrar is mandated to trike off from its register the name of a company which has failed to comply with the issued directive to change its name within **14** days. She deposed that pursuant to the above provisions, on **29th** September 2015, the Registrar wrote to the third Respondent notifying it that their registration was inadvertently done because the applicant was the registered trademark owner of *Schindler Invention AG* and as such vide section **7(1)** of the Trade Marks Act[4] the name was no longer tenable under section **20(2)** of the Companies Act.[5] She averred that the Registrar called upon the third Respondent to change its name within 6 weeks from the date of the letter.

9. M/ s Koech also deposed that the applicant wrote to the office of the Registrar of Companies on **22nd** November 2015 asking it to invoke the provision of section **20 (2) (b)** of the Companies Act, 2015 and, on **22nd** February 2016, the first Respondent wrote to the third Respondent seeking their response to the objections within two weeks in default the applicant would be at liberty to pursue such steps as it deems fit. She further deposed that on **7th** March 2016 the first Respondent wrote to the applicant indicating that the third Respondent had failed to respond to their letter or comply with the directive and advised it that it was at liberty to pursue the steps it deemed fit.

10. M/s Koech averred that section **20** of the repealed companies act did not empower the first Respondent to strike off a company that defaults in complying with the directive to change its name but instead it provided that such company and its directors would be liable to a fine not exceeding one hundred shillings for every day during which such default continued. She averred that the Respondent has complied with the law and done what the law requires of it by issuing a directive to the third Respondent.

11. Regarding the plea for prohibition, she deposed that the Companies Act, 2015 has already catered for that by outlawing registration of companies bearing similar names. Further, she deposed that the first Respondent concedes to the plea for *Mandamus* and prays that it be allowed as prayed within the confines of section **58(5) (6)** & **(7)** of the repealed Act. She averred that the third Respondent ought to bear the costs of the application because the first Respondent has already taken the steps to commence its de-registration.

The third Respondent

12. Despite being served, the third Respondent did not file any reply to the application nor did they participate in the proceedings.

Applicant's Advocates' submissions

13. The applicant's counsel submitted that judicial review proceeding examines whether a public wrong has been committed. To buttress his argument, he cited *Republic v Principal Secretary, Ministry of Mining ex parte Airbus Helicopters Southern Africa (PTY) Ltd*[6] for the proposition that the question is not whether the judge disagrees with what the public body has done, but whether there is some recognizable public law wrong that has been committed.

14. He argued that the applicant has a legitimate expectation that the registrar would not register names that are similar after the applicant was registered. He relied on *Kalpana Rawal v Judicial Service Commission & others*[7] where the court citing authorities reiterated the applicable principles for legitimate expectation to apply. He argued that the applicant had legitimate expectation that its constitutional right to property including protection of its right to intellectual property and rights guaranteed the Companies Act, 2015 and section **7** of the Trade Marks Act.[8] To fortify his argument, he relied on *Agility Logistics Limited & 2 others v Agility Logistics Kenya Limited* for the proposition that the registration of a Trade Mark if valid gives to that person the exclusive right to its use in relation to the goods or in connection with the provision of services and that such right is infringed by a person who not being a proprietor of the Trade Mark or a registered user of the Trade Mark uses a mark identical with or so nearly resembling it as to be likely to deceive or cause confusion in the course of trade or in connection with the services in respect of which it is registered.

15. As for the appropriate reliefs, he cited *Republic v Registrar of Companies & another ex parte Golden Africa Kenya Limited**[9]*** in which the court issued the writ of *Mandamus* against the Registrar of Companies directing him to follow the procedure set out in section **58** of the Companies Act. Additionally, he cited *Republic v Registrar of Companies & another ex parte Atlantic Group (K) Limited* for the proposition that Article **159 (2)** of the Constitution clothes the court with inherent jurisdiction to administer justice as may be necessary to meet the ends of justice. Also, counsel relied on *Republic v Attorney General ex parte Kensington International Ltd & another*[10] for the proposition that the court has residual power, authority and inherent authority to do justice.

The first and second Respondent's Advocates submissions

16. Counsel for the first and second Respondent recalled the steps taken by the first Respondent and the efforts it made to have the third Respondent change the name. He cited *Republic v Registrar of Companies Ex parte Megascope Healthcare (K) Limited & another**[11]*** for the holding that the law prohibits registration of a name similar to another one in the index of companies and that registrar has powers to rectify such a scenario.

17. As for the writ of prohibition, he submitted that the law has already prescribed the action to be taken after repeatedly notifying a

company to change its name and added that the registrar intends to publish in the gazette a notice striking off the 3rd respondent company. He also submitted that the respondent concedes that an order of *Mandamus* if allowed within the confines of section **58(5)(6)** & **(7) of** The Companies Act will complement its intended statutory action and prayed that if granted, it should be on condition that the 3rd respondent bears the costs of the application as the registrar has already taken steps to commence de-registration.

Determination

18. A convenient starting point is that identity is an important concept synonymous with individuality, uniqueness, distinctiveness, character and personality. In a business, identity takes utmost importance. Not only must the business entity be readily identifiable among its customers, but the goods or services it offers must also be identified or associated with it.

19. A unique identity may of course be targeted by those seeking to cash in on it for nefarious reasons. Under the law, a business must have a business name or a company name (if so incorporated). The first Respondent's case is that the third Respondent was registered inadvertently. This is a clear admission that by the time the third Respondent was registered, the name was not available for registration because a different company existed under a similar name. This admission is sufficient to merit the prayers sought. The first Respondent maintains that under section **58** of the repealed Act, the Registrar has no powers to deregister a company, unlike the position under the current Act. Counsel however submitted that the first Respondent intends to publish an appropriate gazette Notice to strike of the company. He however conceded the prayer for *Mandamus* within the confines of section 58 of the repealed Act.

20. The legal validity or otherwise of the first Respondent's averment in its Replying Affidavit that it has no powers under the repealed Act to deregister a company inadvertently registered warrants a close examination. Part **VIII** of the Companies Act, 2015 provides for the Application of the Act to Companies Formed or Registered under the Repealed Acts. In this regard, section **356** of the Companies Act, 2015 is worth considering. It provides that:-

> ***This Act shall apply to existing companies—***
>
> *(a) in the case of a limited company, other than a company limited by guarantee, as if the company had been formed and registered under this Act as a company limited by shares;*
>
> *(b) in the case of a company limited by guarantee, as if the company had been formed and registered under this Act as a company limited by guarantee; and*
>
> *(c) in the case of a company other than a limited company, as if the company had been formed and registered under this Act as an unlimited company:*
>
> > *Provided that any reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under that one of the repealed Acts under which such company was registered.*

21. My reading of the above provision leaves me with no doubt that the Companies Act, 2015 applies to companies registered under the repealed Act. It is my view that with such an express provision, the first Respondent's argument that the repealed Act does not empower it to deregister a company inadvertently registered as in the instant circumstances is legally frail. The legal position that laws do not operate retrospectively cannot apply where the repealing statute expressly provides that it applies. Generally a statute will be construed as operating prospectively only unless the legislature has clearly expressed a contrary intention.[12]

22. The reasoning behind the presumption against the retrospective application of legislation is premised upon the unwillingness of the courts to inhibit vested rights. The general rule is that, in the absence of an express provision to the contrary, statutes should be considered as affecting future matters only; and more especially that they should if possible be so interpreted so as not to take away rights actually vested at the time of their promulgation. A further reason for its existence is that the creation of new obligation or an imposition of new duties by the Legislature is not lightly assumed.Thus a statute is presumed not to apply retrospectively, unless it is expressly or by necessary implication provided otherwise in the relevant legislation. Unless a contrary intention appears from new legislation which repeals previous legislation, it is presumed that no repeal of an existing statute has been enacted in relation to transactions completed prior to such existing statute being repealed.

23. Where the statutory provision confirms the existing law, it is not a case of true retrospectivity, since true retrospectivity means that at a past date, the law shall be taken to have been that which it is not. Thus, if the legal position is **A**, and enactment **X** is designed merely to confirm **A**, then it cannot be said that, subsequent to the promulgation of **X**, the legal position has become **A.** Accordingly, true retrospectivity can only become an issue once **X** replaces, amends or supplements **A.**[13] However, one must not lose sight of the fact that presumptions, however strong, are merely an aid to interpretation and must therefore yield to the intention of the legislature as it emerges from any particular statute. Thus, the answer to the question whether a particular statute has retrospective operation cannot be found by simply determining whether the statute deals with substantive law or matters of procedure. One has always to ascertain the intention of the legislature.[14]

24. Section **20** of the Companies Act, 2015, provides that (2)-

> *(a) If, through inadvertence or otherwise, a company on its first registration or on its registration by a new name is registered by a name which, in the opinion of the registrar, is too like the name by which a company in existence is previously registered, the first-mentioned company may change its name with the sanction of the registrar and, if he so directs within six months of its being registered by that name, shall change it within a period of six weeks from the date of the direction or such longer period as the registrar may think fit to allow.*

(b) If a company makes default in complying with a direction under this subsection, the company and every officer of the company who is in default shall be liable to a fine not exceeding one hundred shillings for every day during which the default continues.

25. Our Constitution requires a purposive approach to statutory interpretation.[15]The purpose of a statute plays an important role in establishing a context that clarifies the scope and intended effect of a law.[16] The often-quoted dissenting judgment of Schreiner JA, eloquently articulates the importance of context in statutory interpretation:-

> *"Certainly no less important than the oft repeated statement that the words and expressions used in a statute must be interpreted according to their ordinary meaning is the statement that they must be interpreted in the light of their context. But it may be useful to stress two points in relation to the application of this principle. The first is that 'the context', as here used, is not limited to the language of the rest of the statute regarded as throwing light of a dictionary kind on the part to be interpreted. Often of more importance is the matter of the statute, its apparent scope and purpose, and within limits, its background."*[17]

26. The Supreme Court of Appeal of South Africa in *Natal Joint Municipal Pension Funds v Endumeni Municipality*[18] acknowledged the interpretation that gives regard to the manifest purpose and contextual approach as the proper and modern approach to statutory interpretation. Wallis JA pointed out that "in resolving a problem, where the language of a statute leads to ambiguity the apparent purpose of the provision and the context in which it occurs will be important guides to the correct interpretation."[19] In the United Kingdom, the Chancery Division of the High Court, per Lord Greene MR in *In re Birdie v General Accident Fire and Life Assurance Corporation Ltd*,[20] stated the following on the contextual approach to statutory construction:-

> *"The real question to be decided is, what does the word mean in the context in which we here find it, both in the immediate context of the sub-section in which the word occurs and in the general context of the Act, having regard to the declared intention of the Act and the obvious evil that it is designed to remedy."*

27. A contextual or purposive reading of a statute must of course remain faithful to the actual wording of the statute. A contextual interpretation of a statute, therefore, must be sufficiently clear to accord with the rule of law.[21] In *Stopforth v Minister of Justice and Others; Veenendaal v Minister of Justice and Others*[22] Stopforth Olivier JA provided useful guidelines for the factors to be considered when conducting a purposive interpretation of a statutory provision:-

> *"In giving effect to this approach, one should, at least, (i) look at the preamble of the Act or at the other express indications in the Act as to the object that has to be achieved; (ii) study the various sections wherein the purpose may be found; (iii) look at what led to the enactment (not to show the meaning, but also to show the mischief the enactment was intended to deal with); (iv) draw logical inferences from the context of the enactment."*

28. The above excerpt is useful while ascertaining the purpose of a statute. This position becomes clear if we read the preamble to the enabling Act, which reads "An Act of Parliament to consolidate and reform the law relating to the incorporation, registration, operation, management and regulation of companies; to provide for the appointment and functions of auditors; to make other provision relating to companies; and to provide for related matters."

29. A purposive construction of the Companies Act, 2015 requires courts and regulatory bodies tasked with enforcement of the Act to interpret and apply the Act in a manner that gives effect to its objects as set out in the preamble. The provisions of the Act proscribing regulation of registration of companies entrenched in the preamble must be given effect to when interpreting the statute. These statutory and policy reasons discernible from the preamble include the need to ensure that double registration of names is not permitted. A faithful reading of section **356** of the Companies Act, 2015 leaves me with no doubt that the legislative intention is clear, the Act applies to Companies registered under the repealed Act. It follows that pursuant to section **20** of the Act, Registrar has the power to deregister a company that has been inadvertently registered. In fact, this position is supported the decision in *Republic v Registrar of Companies Ex parte Megascope Healthcare (K) Limited & another*[23] cited by the first and second Respondents' counsel which held that the law prohibits registration of a name similar to another one in the index of companies and that registrar has powers to rectify such a scenario. It follows that the averments in the first and second Respondents' Replying affidavit that the Repealed Act did not confer the Registrar with powers to strike off from the register a company that has been registered inadvertently is legally unsound.

30. The rationale for protecting a registered name under the Companies Act, 2015 or under the repealed Act is not hard to find. Some guidance can be found in a South African decision of the Supreme Court of Appeal, *Polaris Capital (Pty) Ltd v The Registrar of Companies and Another 2010 (2) SA 274 (SCA).* In this case, the court stated:-

> *"In my view it is inappropriate to attempt to circumscribe the circumstances under which the registration of a company name might be found to be "undesirable." To do so would negate the very flexibility intended by the Legislature by the introduction of the undesirability test in the section and the wide discretion conferred upon the Court to "make such order as it deems fit". For the purposes of the present matter it suffices to say that, where the names of companies are the same or substantially similar and where there is a likelihood that members of the public will be confused in their dealings with the competing parties, these are important factors which the Court will take into account when considering whether or not a name is "undesirable".* *[Emphasis added]*

31. This rationale is discernible in the common law principles concerning passing off which have an impact on whether a company may use its registered company name in trade. The law of passing off was summarized in *Reckitt & Colman v Borden*[24] as *'No man may pass off his goods as those of another.* By implication, this offers some protection to a business that has established goodwill as a result of the use of a name/brand in respect of goods or services. Another business may not register that name as its company name if doing so would engender a misrepresentation that the source of its goods or services is the same as that of the business with established goodwill. In *Abercombie & Kent Ltd v Abercombie & Kent (Uganda) Ltd & Others*,[25] both the Plaintiff and the Defendant were registered on the Register of Companies, the Defendant having been incorporated before the Plaintiff. However, the Court found that:-

"the Plaintiff had acquired a business reputation which it had built over the years as 'Abercombie & Kent' and therefore it has a right to restrain anyone else from injuring its business by using that name."

32. The Court in Abercombie quoted *Parker-Knoll Ltd v Knoll International Ltd**[26]*** stated :-

"In the interests of fair trading and in the interests of all who may wish to buy or sell goods the law recognizes that certain limitations upon freedom of action are necessary and desirable. In some situations the law has had to resolve what might at first appear to be conflicts between competing rights. In solving the problems which have arisen there has been no need to resort to any abstruse principles but rather – to the straight forward principle that trading must not only be honest but must not even unintentionally be unfair."

33. The Court then issued a permanent injunction restraining the Defendants from carrying on business under any name constituted of the words 'Abercombie & Kent' or any semblance thereto as to be likely to deceive or cause confusion. This decision is of immense benefit to companies that have built goodwill in the market before seeking to register company names or trademarks, and should go some way towards addressing the predatory practice of passing off.

34. Having enumerated as I have done above the time tested legal principles, I proceed to briefly examine the principles governing the grant of the writ of *Mandamus.* An order of *Mandamus* will issue to compel a person or body of persons who has failed to perform the duty to the detriment of a party who has a legal right to expect the duty to be performed.[27] *Mandamus* is a judicial command requiring the performance of a specified duty, which has not been performed. *Mandamus* is employed to compel the performance, when refused, of a Ministerial duty, this being its chief use. It is also employed to compel action, when refused, in matters involving judgment and discretion, but not to direct the exercise of judgment or discretion in a particular way, nor to direct the retraction or reversal of action already taken in the exercise of either.[28]

35. *Mandamus* is a discretionary remedy, which a court may refuse to grant even when the requisite grounds for it exist. The court has to weigh one thing against another to see whether the remedy is the most efficacious in the circumstances obtaining. The discretion of the court being a judicial one must be exercised based on evidence and sound legal principles.

36. The test for *mandamus* is set out in *Apotex Inc. vs. Canada* (*Attorney General*),[29] and, was also discussed in *Dragan vs. Canada* (*Minister of Citizenship and Immigration*).[30] The eight factors that must be present for the writ to issue are:-

(i) There must be a public legal duty to act;

(ii) The duty must be owed to the Applicants;

(iii) There must be a clear right to the performance of that duty, meaning that:

a. *The Applicants have satisfied all conditions precedent; and*

b. There must have been:

I. *A prior demand for performance;*

II. A reasonable time to comply with the demand, unless there was outright refusal; and

III. An express refusal, or an implied refusal through unreasonable delay;

(iv) *No other adequate remedy is available to the Applicants;*

(v) The Order sought must be of some practical value or effect;

(vi) There is no equitable bar to the relief sought;

(vii) On a balance of convenience, mandamus should lie.

37. I have carefully considered the above principles and applied them to the facts of this case. I find no doubt that the applicant has established that the applicant has demonstrated that the first Respondent has a public legal duty to act conferred upon him by the law. It is beyond doubt that the duty is be owed to the applicant. The applicant has ably demonstrated a clear right to the performance of the said duty. Also, from the material before me, the Applicant has satisfied all conditions precedent. The applicant wrote to the first Respondent who despite the clear provisions of section **356** of the Companies Act, 2015, took the view that the repealed act does not empower him to de-register the third Respondent.

38. The *ex parte* applicant also seeks an order of *Prohibition*. The writ of prohibition arrests the proceedings of any tribunal, corporation, board or person, when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board or person. A prohibiting order is similar to a quashing order in that it prevents a tribunal or authority from acting beyond the scope of its powers. The key difference is that a prohibiting order acts prospectively by telling an authority not to do something in contemplation.

39. I find and hold that the applicant's application dated **2nd** December 2019 is merited. I allow the said application and order that:-

*a. **That** an order of Mandamus be and is hereby issued compelling the first Respondent to strike off the third Respondent from the Registrar of Companies.*

*b. **That** an order of prohibition be and is hereby issued prohibiting the Registrar of Companies, its agents, servants and or employees from continuing, sustaining or proceeding with registration of the third Respondent or any entity bearing the ex parte applicant's name or names that are strikingly similar and/or which infringe the applicants Trade Marks and Licenses.*

c. No order as to costs.

Right of appeal

Signed, Delivered and at Nairobi this **13th** day of **July** 2020

John M. Mativo

Judge

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[1]Cap 486, Laws of Kenya. This act was repealed by Act No. 17 of 2015.

[2] Act No. 17 of 2015.

[3] Ibid.

[4] Cap 506, Laws of Kenya.

[5] Act No. 17 of 2015.

[6] {2017} e KLR.

[7] {2015} e KLR.

[8]Cap 506, Laws of Kenya.

[9] {2019} e KLR.

[10] {2015} e KLR.

[11] {2017} e KLR

[12] *Genrec MEI (Pty) Ltd v Industrial Council for the Iron, Steel, Engineering, Metallurgical Industry & Others* [1994] ZASCA 143; 1995 (1) SA 563 (A) at 572E-F).

[13] See *Unitrans Passengers (Pty) Ltd t/a Greyhound Coach Lines v Chairman, National Transport Commission & others: Transnet Ltd (Autonet Division) v Chairman, National Transport Commission & others* 1999 (4) SA 1 (SCA) para 13 *and Manyeka v Marine and Trade Insurance Co* Ltd 1979 (1) SA 844 (SE) 847H-848A. See also *Nkabinde & another v Judicial Service Commission & others* [2016] ZASCA 12; 2016 (4) SA 1 (SCA paras 59-4.)

[14] See Kruger v President Insurance Co Ltd 1994 (2) SA 495 (D) at 503E-G.)"[19] [Own emphasis added.

[15] For examples of a purposive approach to statutory interpretation, see *African Christian Democratic Party v Electoral Commission and Others* {2006} ZACC 1; 2006 (3) SA 305 (CC); 2006 (5) BCLR 579 (CC); at paras 21, 25, 28 and 31; *Daniels v Campbell NO and Others* {2004} ZACC 14; 2004 (5) SA 331 (CC); 2004 (7) BCLR 735 (CC) at paras 22-3; *Stopforth v Minister of Justice and Others*; *Veenendaal v Minister of Justice and Others* {1999} ZASCA 72; 2000 (1) SA 113 (SCA) at para 21.

[16] Thornton Legislative Drafting 4ed (1996) at 155 cited in JR de Ville *Constitutional and Statutory Interpretation* (Interdoc Consultants, Cape Town 2000) at 244-50.

[17] *Jaga v Dönges NO and Another; Bhana v Dönges NO and Another* 1950 (4) SA 653 (A) at 662-3.

[18] 2012 4 SA 593 (SCA).

[19] Ibid, at (610B–C).

[20]1949 Ch D 121 130.

[21] *Dawood and Another v Minister for Home Affairs and Others; Shalabi and Another v Minister for Home Affairs and Others; Thomas and Another v Minister for Home Affairs and Others* {2000} ZACC 8; 2000 (3) SA 936 (CC) ; 2000 (8) BCLR 837 (CC) at para 47.

[22] {1999} ZASCA 72; 2000 (1) SA 113 (SCA) at para 21.

[23] {2017} e KLR

[24]{1990} R.P.C. 341, HL at 406

[25]HCCS No. 1035/95.

[26] {1962} P.P.C. 265.

[27] See *Kenya National Examinations Council vs R ex parte Geoffrey Gathenji Njoroge & 9 Others* {1997} eKLR.

[28] *Wilbur vs. United States ex rel. Kadrie*, 281 U.S. 206, 218 (1930). See also Jacoby, The Effect of Recent Changes in the Law of "Non-statutory" Judicial Review, 53 GEO. IJ. 19, 25-26 (1964).

[29] 1993 Can LII 3004 (F.C.A.), [1994] 1 F.C. 742 (C.A.), aff'd 1994 CanLII 47 (S.C.C.), [1994] 3 S.C.R. 1100.

[30] 2003 FCT 211 (CanLII), [2003] 4 F.C. 189 (T.D.), aff’d 2003 FCA 233 (CanLII), 2003 FCA 233).