



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI COMMERCIAL & ADMIRALTY DIVISION**

**MISC CASE NO. 33 OF 2016**

**IN THE MATTER OF COMPANIES ACT.....PLAINTIFF**

**-VERSUS-**

**IN THE MATTER OF PORTREITZ CO. LTD.....DEFENDANT**

**RULING**

1. The Application before the court is a **Notice of Motion** dated 11<sup>th</sup> February 2016 taken out by the applicant under the provisions of the law cited in the application. The application seeks as the main prayer an order restoring Portreitz Company Limited to the Registrar of Companies.
2. The Application is premised on the grounds set out therein, and is supported by the affidavit of Mary Ciumwari Mwaniki sworn on 11<sup>th</sup> February 2016 with its annexures.
3. In brief, the applicants case is that pursuant to an agreement for sale dated 6<sup>th</sup> June 2012, the Applicant purchased title number Kwale/Funzi Island/338 from a limited liability company known as Portreitz Company Limited, which company was registered in the Republic of Kenya under the repealed Companies Act. The said Portreitz Company Limited held itself out to the Applicant as the *bonafide* owner of title number Kwale/Funzi Island/338. Among the warranties by Portreitz Company Limited to the Applicant at the time of the sale of title number Kwale/Funzi Island/338, was that it had good valid and proper title to the property and that there was no existing suit or threatened suit or claim challenging the title and ownership of the property. The said title number Kwale/Funzi Island/338, was registered in favour of the Applicant on 19<sup>th</sup> September 2012 vide a transfer instrument dated 28<sup>th</sup> August 2012. The Applicant obtained an interest in the said title number Kwale/Funzi Island/338 which interest is subject to the obligations owed to the Applicant by Portreitz Company Limited.
4. Sometime in the month of July 2015, when about to conclude a change of user of the property, it came to the Applicant's knowledge that there had been a reversal its title number Kwale/Funzi Island/338 to plot no. 234, 235, 236 and 365 pursuant to a Court Order issued on 11<sup>th</sup> August 2005 in a Court Land Case No. 23 of 2001 and a mutation no. MUT/228/548/02/15 dated 17<sup>th</sup> February 2015. Until the month of July 2015, the Applicant was at all material times unaware of the said Court Case No. 23 of 2001 and the subsequent reversal of its title which resulted in the rectification of the register. The Applicant's subsequent searches on the resultant title numbers Kwale/Funzi Island/234 – 236 and 365 following the reversal of its title number Kwale/Funzi Island/338 revealed that parcel nos. 234, 235 and 236 have been transferred to third parties, with no records of the existence of a title number Kwale/Funzi Island/365 being at the Kwale District Land Registry. Moreover, the deed file over the Applicant's title number Kwale/Funzi Island/338 cannot also be traced at the Kwale District Land Registry.

5. It has also come to the Applicant's knowledge that the said Portreiz Company Limited, the Vendor and transferee of title number Kwale/Funzi Island/338 was dissolved on 14<sup>th</sup> February, 2014.

6. The Applicant's investigations have also revealed that all the prior registered proprietors of the reversed parcels of land numbers Kwale/Funzi Island 234, 235 and 236 were corporate entities whose directors and shareholders are the same individuals as the directors and shareholders of the dissolved Portreiz Company Limited. All efforts by the Applicant to obtain the co-operation of the directors of the dissolved Portreiz Company Limited to furnish information to support an application by the Applicant to the Lands Registrar for rectification of the register have proven futile. The said Portreiz Company Limited was dissolved on 14<sup>th</sup> February 2014, almost 2 years ago under the repealed Companies Act (Cap. 486, Laws of Kenya) which provided a 2 year time limit for an application for restoration of a dissolved company. The Applicant intends to institute legal proceedings against the said Portreiz Company Limited and its officers and shareholders. The Applicant stands to lose all avenues of redress should Portreiz Company Limited be allowed to continue as a dissolved company. It is in the interests of justice that the Applicant's application be granted and Portreiz Company Limited be restored to the Register of Companies so as to enable the Applicant seek legal redress against the said company. Unless this Court intervenes and this Application is heard on a priority basis, the proprietary interests of the Applicant in title number Kwale/Funzi Island/338 will continue to be prejudiced.

7. On 15<sup>th</sup> February 2016 when the applicant first came to Court ex-parte, the court ordered and directed that the application be served upon the Registrar of Companies, to appear in these proceedings as a Respondent for hearing of the application on 23<sup>rd</sup> February 2016. The application was served upon the Registrar by a Process Server Simon Kathumbi on 17<sup>th</sup> February 2016 and the order and application were received at the Registrar of Companies office at 4.30 pm. However, the Registrar did not appear for the hearing of the application on 23<sup>rd</sup> February 2016 and no reason was given for the failure. This court, pursuant to the Affidavit of Service filed herein on 22<sup>nd</sup> February 2016, allowed Mr. Mwale for the Applicant to proceed with the application.

8. I have carefully considered this application. In my view, the application is merited. It appears that the company sought to be restored to the registered engaged in some criminal activities and then decided to dissolve itself ostensibly to avoid the consequences of its unlawful conduct. It should be restored to the companies' Registrar to answer to the questions to be raised by the applicant.

9. In the upshot, the application is allowed and orders made as follows:

1. ***The Registrar of Companies is hereby Directed and Ordered to forthwith Restore Portreiz Company Limited to the Registrar of Companies.***
2. ***This order shall be served upon the Registrar of Companies for action.***
3. ***Costs of the application shall be in the cause.***

Orders accordingly.

**READ, DELIVERED AND DATED, AT NAIROBI THIS 4<sup>TH</sup> DAY OF MARCH 2016.**

**E. K. O. OGOLA**

**JUDGE**

**Ruling Read in open court in the presence of:**

Mr. Mwale for Applicant

No Appearance for Defendant

Teresia – Court Clerk