



**Kirichwa Heights Limited v Amuguni; Registrar of Companies  
(Interested Party) (Commercial Miscellaneous Application E714 of 2024)  
[2025] KEHC 13364 (KLR) (Commercial and Tax) (18 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13364 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL MISCELLANEOUS APPLICATION E714 OF 2024  
MN MWANGI, J  
SEPTEMBER 18, 2025  
IN THE MATTER OF THE COMPANIES ACT, 2015 LAWS OF KENYA  
-AND-  
IN THE MATTER OF RECTIFICATION OF THE COMPANY REGISTER  
(KIRICHTWA HEIGHTS LIMITED – C.165308)**

**BETWEEN**

**KIRICHTWA HEIGHTS LIMITED ..... APPLICANT**

**AND**

**HENRY AMENA AMUGUNI ..... RESPONDENT**

**AND**

**REGISTRAR OF COMPANIES ..... INTERESTED PARTY**

**RULING**

1. The applicant filed a Notice of Motion application dated 4<sup>th</sup> September 2024 pursuant to the provisions of Sections 1A, 1B & 3A of the *Civil Procedure Act*, Order 51 Rule 1 of the *Civil Procedure Rules*, 2010, Section 863 of the *Companies Act*, No. 17 of 2015, Article 159 of the *Constitution* of Kenya, 2010 and all other enabling provisions of the law. The applicant prays for orders that this Court issues a declaration that the respondent ceased to be its Director as resolved in the Annual General Meeting held on 22<sup>nd</sup> July 2017, a declaration that the respondent ceased to be a shareholder of the said company on 19<sup>th</sup> July 2019 after transferring shares to Dr. Beatrice Njeri Mbira upon selling Apartment No. U2, and an order directing the Registrar of Companies to update the Company



- Register by removing the respondent's name and entering the name of Dr. Beatrice Njeri Mbira as the new shareholder.
2. The application is premised on the grounds on the face of the Motion, and it is supported by an affidavit sworn on the same day by Mr. Albert Kamunde, the Company Secretary of the applicant company. Mr. Kamunde averred that at the applicant company's Annual General Meeting held on 22<sup>nd</sup> July 2017, it was resolved that the respondent resigns as a Director of the company, but the respondent has failed to sign the necessary resignation letter. Mr. Kamunde deposed that the respondent sold his apartment unit No. U2 and transferred his corresponding share to Dr. Beatrice Njeri Mbira on 18<sup>th</sup> July 2019. He averred that despite numerous efforts including emails, WhatsApp messages and communication through the respondent's former Advocates, the applicant has been unable to trace the respondent to formalize his resignation and the Registrar of Companies has declined to remove the respondent's name without his signed resignation letter and affidavit in support thereof.
  3. The instant application was canvassed by way of written submissions. The applicant's submissions were filed on 19<sup>th</sup> September 2024 by the law firm of Albert Kamunde & Company LLP. From the Court record and the CTS, it is evident that neither the respondent nor the interested party participated in these proceedings.
  4. Ms Wangari, learned Counsel for the applicant submitted that pursuant to the provisions of Section 139(1) & (2) of the *Companies Act*, 2015, the respondent is no longer a Director of the applicant company as its Annual General Meeting held on 22<sup>nd</sup> July 2017 resolved that he be removed, which he did not oppose. She further submitted that the respondent ceased to be a shareholder of the applicant company after selling his unit, Apartment No. U2 to Dr. Beatrice Njeri Mbira on 21<sup>st</sup> January 2019 and transferring his share on 18<sup>th</sup> July 2019, but his name remains on the Company Register due to his refusal to sign the necessary resignation documents.
  5. Ms Wangari submitted that pursuant to the provisions of Section 862 of the *Companies Act*, 2015, the applicant applied to the interested party on 26<sup>th</sup> March 2021 to remove the respondent as a Director and shareholder of the applicant company and for registration of Dr. Beatrice Njeri Mbira's shareholding, but the Registrar has refused to process the request without the respondent's resignation letter and affidavit, which the applicant has been unable to obtain despite numerous efforts. She urged this Court to direct the interested party to rectify the Company Register, in line with the provisions of Section 863(1) of the *Companies Act*. To buttress her submissions, Counsel relied on the decision made in the case of *Abdikadir Ahmed Sheikh & another v Eunah Wamuyu Kariuki & another* [2018] eKLR and in *Jackson King'ori & 2 others v Robert Mwangi Nderitu & another; Registrar of Companies (Interested Party)* [2021] eKLR.

#### **Analysis and Determination.**

6. Upon consideration of the application herein, the grounds on the face of it, the affidavit filed in support thereof and the written submissions by Counsel for the applicant, the issue that arises for determination is whether the instant application is merited.
7. The applicant seeks orders for this Court to declare that the respondent is neither a shareholder nor a Director of the applicant company and for this Court to direct the Registrar of Companies to update the applicant's Company Register by removing the respondent's name and entering the name of Dr. Beatrice Njeri Mbira as the new shareholder. It is evident from the applicant company's CR-12 dated 29<sup>th</sup> September 2022 annexed to the applicant's affidavit in support of the instant application that the respondent held only one share in the applicant company.



8. The applicant has however provided a Sale Agreement dated 21<sup>st</sup> January 2019, showing that the respondent sold Apartment No. U2 at Kirichwa to Dr. Beatrice Njeri Mbira for Kshs.12,500,000/=. On perusal of the said Agreement, the respondent acknowledged receipt of Kshs.5,500,000/= and the parties therein agreed that the balance of Kshs.7,000,000/= would be paid within 90 days after execution of the aforementioned Sale Agreement. While no evidence of payment of the said balance was provided, the applicant submitted a transfer of share or stock for Flat No. U2 executed by the respondent and Dr. Beatrice Njeri Mbira dated 18<sup>th</sup> July 2019 where the respondent acknowledged having received Kshs.1,000/= for the share transfer. The applicant also produced a Kenya Revenue Authority receipt and/or payment slip confirming stamp duty payment for the share transfer.
9. The applicant provided a resolution from the Annual General Meeting held on 22<sup>nd</sup> July 2017, confirming that the respondent was present when it was resolved that he resigns as a Director of the applicant company, but the respondent has however refused to sign the resignation letter, and despite numerous efforts, the applicant has been unable to trace him. The applicant claimed that the Registrar of Companies has declined to remove the respondent's name from the applicant's Company Register without a signed resignation letter and affidavit by the respondent, necessitating the instant application.
10. It is not disputed that the respondent was a shareholder in the applicant company until July 2019, when he sold his share to Dr. Beatrice Njeri Mbira for Kshs.1,000/=. Given the subsequent transfer, the respondent should no longer be listed as a shareholder in the applicant's Company Register or CR-12. Under Section 862 of the *Companies Act*, the Registrar of Companies has the authority to rectify the Register upon application by a company or any interested party. The applicant has stated that it applied to the Registrar of Companies to remove the respondent's name, and register the name of Dr. Beatrice Njeri Mbira in the applicant's Company Register, as the new shareholder, but the Registrar refused to process the changes due to the applicant's inability to provide the respondent's signed resignation letter and affidavit.
11. Section 863 of the *Companies Act* gives Courts the power to make an order directing the Registrar of Companies to make changes to a Company Register. It states that -
  1. The Registrar shall remove from the Register any entry –
    - a. that derives from anything that the Court has declared to be invalid or ineffective, or to have been done without the authority of the company; or
    - b. that the Court has declared to be factually inaccurate; or to be derived from something that is factually inaccurate or is forged, and that the Court has directed to be removed from the Register.
  2. The Court shall specify in the order the entry that is to be removed from the Register and indicate where in the Register it is to be found.
  3. The Court may not make an order for the removal from the Register of any entry the registration of which had legal consequences as mentioned in section 861(3) unless it is satisfied –
    - a. that the presence of the entry in the Register has caused, or may cause, damage to the company concerned; and
    - b. that the company's interest in removing the entry outweighs the interest (if any) of other persons in the continued appearance of the entry in the Register.



4. If, in such a case, the Court makes an order for removal, it may make such consequential orders as appear just with respect to the legal effect (if any) to be accorded to the entry because it has appeared in the Register.
  5. The Court shall ensure that a copy of its order is sent to the Registrar for registration.
  6. This section does not apply in respect of an entry in the Register if the Court has other specific powers under this Act to deal with the matter.
12. Having found that the respondent sold his share in the applicant company to Dr. Beatrice Njeri Mbira for Kshs.1,000/= and that he should no longer be listed as a shareholder in the applicant Company's Register or CR-12, this Court finds that the applicant has made out a case for this Court to exercise its discretion in its favour by directing the Registrar of Companies to remove the respondent's name from the applicant's Company Register, and register Dr. Beatrice Njeri Mbira as the new shareholder, pursuant to Section 863 of the [Companies Act](#).
13. On the issue of the respondent's directorship status in the applicant company, if at all it was resolved that the respondent resigns as a Director of the applicant company and he refused to do so, the applicant could have exercised its rights under Section 139(1) of the [Companies Act](#) to remove him by an ordinary resolution at a meeting. Further, instead of seeking Court intervention, the applicant ought to have followed the proper procedure for removal of a Company Director, which includes issuing a Special Notice as required under Section 139(2) of the [Companies Act](#) which states that –
- However, a special notice is required for a resolution to remove a director under this section or to appoint a person to replace the director so removed at the meeting at which the director is removed.
14. Further, Section 141 of the [Companies Act](#) provides for the right of Directors to protest against such removal. The section provides–
1. On receipt of notice of a motion for a resolution to remove a director under section 139, the company shall send a copy of the notice to the director concerned.
  2. The director, whether or not a member of the company may be heard on the discussion of the motion at the meeting.
  3. Subsection (4) applies when notice is given of a proposed resolution to remove a director under section 139.
  4. Within twenty-one days after the notice is given, the director may make, with respect to the motion representations in writing to the company and request that the members of the company be notified of the director's representations.
15. It is evident from the annexures attached to the applicant's affidavit in support of the instant application that the applicant only demonstrated a resolution for the respondent's resignation as a Director but failed to provide evidence of service of the Special Notice required under Section 139(2) of the [Companies Act](#) despite claiming that the said Notice was served upon the respondent. Additionally, the applicant did not show compliance with Section 141 of the [Companies Act](#).
16. Under the [Companies Act](#), 2015, a person does not need to be a shareholder of a company to be eligible as a Director, which means that the respondent's status as a non-shareholder of the applicant company since July 2019 does not automatically disqualify him from being its Director.



17. I am as such not persuaded that an order should issue from this Court to the Registrar of Companies directing it to remove the respondent's name from the applicant's Company Register as its Director.
18. It is my finding that the instant application is partly successful. I make the following orders –
- i. A declaration is hereby issued declaring that the respondent ceased to be a shareholder of the applicant company on 19<sup>th</sup> July 2019 after transferring his share to Dr. Beatrice Njeri Mbira upon selling Apartment No. U2;
  - ii. The Registrar of Companies is hereby directed to update the applicant Company's Register by removing the respondent's name as a shareholder and entering the name of Dr. Beatrice Njeri Mbira as the new shareholder; and
  - iii. The respondent shall pay the costs of this application.

It is so ordered.

**DELIVERED DATED, SIGNED AT NAIROBI ON THIS 18<sup>TH</sup> DAY OF SEPTEMBER 2025.  
RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

**NJOKI MWANGI**

**JUDGE**

In the presence of:-

Mr. Abdi holding brief for Mr. Kamunde for the applicant

No appearance for the respondent

No appearance for the interested party

Ms B. Wokabi – Court Assistant.

**NJOKI MWANGI, J.**

