



**Muiruri & 7 others v Rioki Estate Company (1970) Limited (Commercial Petition E020 of 2024)
[2025] KEHC 13451 (KLR) (Commercial and Tax) (18 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 13451 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL PETITION E020 OF 2024**

MN MWANGI, J

SEPTEMBER 18, 2025

**IN THE MATTER OF OPPRESSIVE CONDUCT IN THE CONDUCT
OF THE AFFAIRS OF RIOKI ESTATE COMPANY (1970) LIMITED**

-AND-

**IN THE MATTER OF FAILURE TO ENTER THE PETITIONERS NAMES IN
THE COMPANY'S REGISTER OF RIOKI ESTATE COMPANY (1970) LIMITED**

BETWEEN

**JOYCE WANGUI MUIRURI 1ST PETITIONER
LYDIA WANJIKU KARANJA MBUGUA 2ND PETITIONER
LEAH WANJIKU KIRUKI 3RD PETITIONER
MARY WAIRIMU KAMAU 4TH PETITIONER
LEAH MUKAMI NGANGA 5TH PETITIONER
ADONISHA WANGARI NDUU 6TH PETITIONER
ESTHER WANJIKU NDICHU 7TH PETITIONER
SAMUEL KAHUKI NJAU 8TH PETITIONER**

AND

RIOKI ESTATE COMPANY (1970) LIMITED RESPONDENT

JUDGMENT

1. The petitioners filed the instant petition vide a petition dated 20th September 2024 seeking orders that the respondent be compelled to transfer the shares of Phylis Watau Kimani to her Estate's beneficiaries



- as per the Certificate of Confirmation of Grant issued by the High Court in Nairobi HCFP&A No. 99 of 2011, and for the respondent register to the petitioners as members in the respondent company's Register, issue share certificates to the petitioners and grant the petitioners all rights and benefits accorded to other ordinary shareholders.
2. The petition is premised on the grounds on the face of the petition, and it is supported by an affidavit sworn on the same day by Ms Mary Wairimu Kamau, the 4th petitioner herein. The petitioner's case is that Phylis Watau Kimani (deceased), was a shareholder & member No. 3628 of the respondent company with 162 fully paid-up shares, as is evident on share certificate No. 3167 that had been issued to her by the respondent. That following her death, her Estate was administered under Nairobi HCFP&A No. 99 of 2011, resulting in a Certificate of Confirmation of Grant that distributed her shares in the respondent company among the petitioners. Ms Kamau deposed that on 4th July 2024, the Estate's Advocates requested the respondent to transfer the deceased's shares to the petitioners, update the company Register, and issue share certificates to the petitioners, but the respondent refused to comply.
 3. Ms Kamau contended that the respondent is preparing to distribute a parcel of land in Kiambu County among its shareholders based on the current Register which excludes the petitioners. She averred that the refusal to effect the share transfer amounts to contempt of a Court order and constitutes oppressive conduct, including denying the petitioners their rightful ownership and shareholder benefits, proceeding with land distribution without recognizing the petitioners and violating the petitioners' constitutional right to property under Article 40 of *the Constitution*. She stated that in filing the instant petition, the petitioners relied on the provisions of Sections 780 & 782 of the *Companies Act*, 2015, which allow members of a company to petition the Court where company actions are oppressive or prejudicial to their interests.
 4. In opposition to the petition herein, the respondent filed Grounds of Opposition dated 30th September 2024 raising the following grounds –
 - i. The petition is misconceived, misguided and does not provide constitutional basis that would justify the petitioners to commence this proceeding by way of a petition;
 - ii. That the petitioners have not established any clear infringement of their constitutional right to justify the prayers sought herein;
 - iii. There is no evidence to support the petitioners' allegations of infringement of their constitutional rights; and
 - iv. That the petition herein is bad in law and an abuse of the due process of the Court.
 5. The respondent also filed a replying affidavit sworn on 30th December 2024 by Mr. David Njoroge Chuchu, the respondent's current Chairman. He acknowledged that the petitioners are indeed beneficiaries of the late Phylis Watau Kimani, a shareholder of the respondent company with 162 shares. He averred that the petitioners obtained an amended Certificate of Confirmation of Grant dated 25th June 2024, which distributed the deceased's shares among them. That thereafter, they requested for a transfer of the deceased's shares, which has not been effected to date. He contended that the instant petition is baseless, self-serving, and lacks constitutional grounding, as no actual infringement of constitutional rights has been established.
 6. Mr. Chuchu denied the allegations of oppression and prejudice. He averred that before the petitioners' confirmation of confirmation of Grant was amended, shareholders resolved in an Annual General Meeting held on 23rd September 2023 to subdivide 400 acres of land, with each share translating to



one plot measuring 40 x 80 feet, but due to the complexity and scale of this process, the respondent company suspended new member registration until completion of planning, surveying, and approvals by the County Government of Kiambu, which decision affected all new beneficiaries including the petitioners. Mr. Chuchu contended that transferring the 162 shares and splitting them among eight petitioners now, would interfere with the ongoing sub-division matrix and affect 4,580 shareholders. He maintained that the suspension is reasonable and temporary, and the petitioners have been assured of recognition once the process is complete.

7. The instant petition was canvassed by way of written submissions. The petitioners' submissions dated 15th January 2025 were filed by the firm of Graham Law Advocates, whereas the respondent's submissions dated 20th February 2025 were filed by the law firm of G. K. Gatere & Company Advocates.
8. Mr. Muturi Njoroge, learned Counsel for the petitioners stated that the petition herein has been brought under the *Companies Act*, 2015, not as a constitutional petition. He submitted that the petition was filed under Sections 780 & 782 of the *Companies Act*, based on the petitioners' position as minority shareholders vulnerable to the control of majority shareholders and the Board. He noted that the Act does not specify the procedural form for applications under these Sections but relied on the case of John Muturi Nyaga v Graham Alexander Walsh, Mark Rene Mesdag, Eric Scott Edgar & Avro Leasing Limited [2017] KEHC 4617 (KLR), to support the position that such applications can properly be initiated by way of a petition. Counsel argued that oppressive conduct is not rigidly defined and must be assessed based on the facts of each case.
9. He cited the case of Velani & 6 others v Naran & 2 others [2021] KEHC 75 (KLR) and emphasized that shareholders expect to receive dividends and a share of company assets, and as such, the respondent's failure to transfer the deceased's shares to the petitioners is oppressive, unfair, and prejudicial, as it deprives them of rightful dividends and participation in the upcoming land distribution. Mr. Njoroge submitted that under Section 780(2)(b) of the *Companies Act*, the petitioners became members of the respondent by operation of the law upon issuance of the Certificate of Confirmation of Grant, making the respondent's role purely administrative. He argued that the respondent has no discretion to refuse the transfer of shares and that the claim that only members in the Register as at 24th June 2023 would receive plots lacks legal validity, as it was a unilateral Board decision not ratified in a general meeting.
10. It was submitted by Counsel that the respondent's justification of ongoing land sub-division is invalid, since the proposal was rejected by the Kiambu County due to zoning laws requiring minimum plot sizes of 0.1 ha. Mr. Njoroge contended that that denying the petitioners membership and benefits is discriminatory contrary to the provisions of Article 27 of *the Constitution* and infringes on their right to property contrary to Article 40 of *the Constitution* of Kenya. He urged this Court to allow the instant petition, as there is no legal basis for the respondent's refusal.
11. Mr. Gatere, learned Counsel for the respondent submitted that the petitioners ought to have approached this Court by way of an application pursuant to the provisions of Order 51 of the Civil Procedure Rules, 2010 as opposed to a petition. He contended that the test for oppressive or unfairly prejudicial conduct is objective and must show both prejudice to the members' interests and that the conduct is unfair. He cited the case of Zillow Limited & another v Alaska Limited & 2 others (supra), and asserted that oppressive conduct must involve bad faith, unfair dealing, or a significant departure from fair conduct. Counsel maintained that the respondent does not deny the petitioners' right to be registered as shareholders of the respondent, but maintains that the timing and ongoing sub-division processes make immediate registration impractical.



12. Mr. Gatere stated that the petitioners received their Amended Grant on 26th June 2024, after the sub-division process had already begun, and by that time, a Special General Meeting held on 24th June 2024 had resolved to allocate land based on the formula one share, one vote, one plot, not weighted by the number of beneficiaries. He stated that the Directors of the respondent company suspended registration of new members to facilitate planning and compliance with government requirements. Mr. Gatere contended that adding eight new shareholders based on one original share would inflate entitlements and disrupt the sub-division process, creating hardship to the already 4,580 existing shareholders.
13. He asserted that the petitioners' attempt to split the single share among eight is contrary to shareholder resolutions and equity. Mr. Gatere submitted that the respondent acted in good faith and its actions are neither oppressive nor unfair, and in any event, the petitioners have not proved their allegations, contrary to the provisions of Section 107 of the *Evidence Act*. He asserted that this matter can be addressed through amicable agreement on registration timing. He urged this Court to dismiss the petition with costs.

Analysis And Determination.

14. I have considered the instant petition, the grounds on the face of it, and the affidavit filed in support thereof. I have also considered the replying affidavit and Grounds of Opposition filed by the respondent, as well as the written submissions made by Counsel for the parties. The issues that arises for determination are –
 - i. Whether the current proceedings are properly before this Court under Sections 780 & 782 of the *Companies Act*; and
 - ii. Whether the instant petition is merited.

Whether the current proceedings are properly before this Court under Sections 780 & 782 of the *Companies Act*.

15. The respondent opposed this petition on the basis that it lacks constitutional foundation, and argued that no constitutional rights have been infringed and that the matter should have been brought under Order 51 of the Civil Procedure Rules. In response, the petitioners asserted that this petition has been brought under the *Companies Act*, 2015, not as a constitutional petition. They contended that while the *Companies Act* does not prescribe a specific procedure for applications made pursuant to the provisions of Sections 780 & 782, case law supports initiating such applications by way of petitions.
16. To determine whether the petitioners should have proceeded by way of a petition or in the manner provided for under Order 51 of the Civil Procedure Rules, 2010, the Court must first examine the meaning and effect of the provisions of Sections 780 and 782 of the *Companies Act*, which form the basis of the petition herein. The said provisions state that –
 780. Application to Court by company member for order under Section 796
 1. A member of a company may apply to the Court by application for an order under Section 782 on the ground –
 - a. that the company's affairs are being or have been conducted in a manner that is oppressive or is unfairly prejudicial to the interests of members generally or of some part of its members (including the applicant); or



- b. that an actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be oppressive or so prejudicial.
 - 2. 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.
782. Power of Court to make orders for protection of members against oppressive conduct and unfair prejudice
- 1. If, on the hearing of an application made in relation to a company under Section 780 or 781, the Court finds the grounds on which the application is made to be substantiated, it may make such orders in respect of the company as it considers appropriate for giving relief in respect of the matters complained of.
 - 2. In making such an order, the Court may do all or any of the following:
 - a. regulate the conduct of the affairs of the company in the future;
 - b. require the company –
 - i. to refrain from doing or continuing an act complained of; or
 - ii. to do an act that the applicant has complained it has omitted to do;
 - c. authorise civil proceedings to be brought in the name and on behalf of the company by such person or persons and on such terms as the Court directs;
 - d. require the company not to make any, or any specified, alterations in its articles without the leave of the Court;
 - e. provide for the purchase of the shares of any members of the company by other members or by the company itself and, in the case of a purchase by the company itself, the reduction of the company's capital accordingly.
 - 3. Subsection (2) does not limit the general effect of subSection (1).
 - 4. The company is entitled to be served with a copy of the application and to appear and be heard as respondent at the hearing of the application.
17. From the foregoing provisions, it is manifest that Sections 780 & 782 of the [Companies Act, 2015](#), offer statutory protection to shareholders/members against oppressive or unfairly prejudicial conduct and allow a member to apply to Court for relief. The said provisions do not specify the form that such an application should take. In my considered view, applications under Sections 780 & 782 of the [Companies Act](#) are typically made when a party believes their rights under the Act are being infringed. The resulting Court orders are usually mandatory injunctions, often requiring the company or the Registrar of Companies to take specific actions. For that reason, I am not persuaded that such orders can be properly issued by way of an application.



18. This Court concurs with the finding in the case of John Muturi Nyaga v Graham Alexander Walsh, Mark Rene Mesdag, Eric Scott Edgar & Avro Leasing Limited (*supra*) cited by the petitioners, where the Court when faced with a similar question held that –

The opening words of Section 780(1) talks of a member applying to Court by Application. Our Section 780(1) borrows heavily from Section 994(1) of The English *Companies Act* 2006 which provides as follows:-

- “(1) A member of a company may apply to the Court by petition for an order under this Part on the ground -
- (a) that the company's affairs are being or have been conducted in a manner that is unfairly prejudicial to the interests of members generally or of some part of its members (including at least himself), or
 - (b) that an actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial”.

Unlike the Kenyan situation, the English Law is that a Section 994 Application requires a Petition. The Grounds on which the Petition is presented and the nature of relief must be specified in the Petition.

.....

The Applicant will not only be required to specify the grounds upon which the Application is brought but, in the words of Section 782(1), to substantiate them. To substantiate means to provide evidence to support or prove the truth of (12th Edition Concise Oxford English Dictionary). While it may be sufficient to provide that proof by way of Affidavit evidence, there would be instances where the leading of oral evidence may be necessary (e.g. where alleged fraud is to be proved). It is the view of this Court that the procedure of a Section 780 Application must be one that allows and provides for a substantive interrogation of the Applicants grievances. In addition it must be a procedure within which a deserving Applicant can seek and obtain Interlocutory relief pending the substantive outcome. This Court very much doubts that the Application contemplated under Section 780 is in the nature of the typical application provided for under order 51 of The Civil Procedure Rules. I prefer to think that, just like Applications for Liquidation of Companies under the *Insolvency Act* (Act No.18 of 2015), a Section 780 Application should ideally be by way of Petition.

19. Bearing in mind the above decision, I am satisfied that the petitioners herein have properly approached this Court to seek reliefs under Sections 780 & 782 of the *Companies Act*, particularly given that these provisions do not prescribe a specific procedural format for such applications.
20. It is therefore my finding that these proceedings were properly initiated under Sections 780 & 782 of the *Companies Act*.
- If the instant application is merited.
21. The petitioners' prayer is for this Court to compel the respondent to transfer the shares of Phylis Watau Kimani (deceased) to her Estate's beneficiaries as per the Certificate of Confirmation of Grant issued by the High Court in Nairobi HCFP&A No. 99 of 2011, register the petitioners as members in the



respondent company's Register, issue share certificates to the petitioners and grant the petitioners all rights and benefits accorded to other ordinary shareholders.

22. It is not in dispute that the petitioners are beneficiaries of the late Phylis Watau Kimani, who held 162 shares in the respondent company, following the issuance of an Amended Certificate of Confirmation of Grant dated 25th June 2024, which distributed the deceased's shares among the petitioners. The respondent also does not contest that the Advocate acting for the deceased's Estate requested the transfer of the shares, an update of the respondent Company Register, and the issuance of share certificates to the petitioners, but none of these actions have been carried out to date.
23. The respondent explains that the reason for not complying with the transfer request is that prior to the amendment of the petitioners' Certificate of Confirmation of Grant, a resolution was passed during its Annual General Meeting held on 23rd September 2023 to sub-divide 400 acres of land, with each share equating to a plot measuring 40 x 80 feet, and that given the complexity and scale of this undertaking, the respondent temporarily suspended the registration of new members until the planning, surveying, and approval processes by the Kiambu County Government were completed. The respondent contended that the said suspension applies to beneficiaries, including the petitioners herein. The respondent further contended that transferring and sub-dividing the 162 shares among the eight petitioners at this stage would disrupt the current sub-division matrix and affect the interests of approximately 4,580 shareholders. He maintained that the suspension is both reasonable and temporary, and that the petitioners have been assured of their recognition once the process is finalized.
24. As stated here before, Sections 780 & 782 of the *Companies Act* offer statutory protection to shareholders/members against oppressive or unfairly prejudicial conduct. Under Sections 780 & 782 of the *Companies Act*, 2015, oppressive or unfairly prejudicial conduct refers to company actions or omissions that harm the interests of a member in a manner that is unjust, inequitable, or contrary to fair expectations. This Court is of the considered view that key elements of oppressive or unfairly prejudicial conduct include actions that cause prejudice or harm to the interests of members. Such prejudice must be unfair, unjust, or inequitable. The Court in the case of *Velani & 6 others v Naran & 2 others* (supra) in defining what amounts to unfair oppressive conduct held that –

Oppression has been characterized as conduct which is burdensome, harsh and wrongful, or which lacks of probity and fair dealing. The reference to conduct that is “oppressive” or “unfairly prejudicial to the interests of the members generally or of some part of its members” in Section 780 (1) (a) makes it clear that conduct affecting all members of a company equally may be unfairly prejudicial. ...

There are two elements to the requirement of unfair prejudice, and both must be present to succeed in a claim: (a) the conduct must be prejudicial in the sense of causing prejudice or harm to the relevant interest of the members or some part of the members of the company (i.e. shareholders), and, (b) it must be unfair.

The categories of conduct which may amount to unfairly prejudicial conduct are not closed. However, common examples of what may constitute unfairly prejudicial conduct are: -

- a. exclusion from management in circumstances where there is a (legitimate) expectation of participation;
- b. the diversion of business to another company in which the majority shareholder holds an interest;
- c. the awarding by the majority shareholder to himself of excessive financial benefits; and



- d. abuses of power and breaches of the Articles of Association. For example, the passing of a special resolution to alter the Company's Articles may be unfairly prejudicial conduct if such alterations would affect the Petitioner's legitimate expectation that he would participate in the management of the Company. ...
25. In this case, the petitioners contend that the oppressive conduct by the respondent lies in its failure to transfer the shares of the late Phylis Watau Kimani to them as the beneficiaries of her Estate. The main complaint is that the respondent has failed to update its Register of members to reflect the petitioners, issue them with share certificates, and accord them the rights and benefits enjoyed by other ordinary shareholders. This is despite the fact that the petitioners have been issued with a Certificate of Confirmation of Grant by the High Court in Nairobi HCFP&A No. 99 of 2011.
26. On the other hand, the respondent's argument is that by the time the petitioners obtained the said Certificate of Confirmation of Grant, a resolution had already been passed at the Annual General Meeting held on 23rd September 2023 to sub-divide the respondent's 400 acres of land, with each share corresponding to a plot measuring 40 x 80 feet, but it decided to temporarily suspend the registration of new members pending completion of the planning, surveying, and approval processes by the Kiambu County Government. It is however my finding that the respondent's argument carries little or no probative value, as the petitioners are already deemed as members of the respondent company by virtue of the transmission of their late mother's shareholding. Legally, even in death, Phyllis Watau Kimani's shares were not extinguished. The petitioners are asserting their rights to inherit and take over existing shares held by a deceased member.
27. From the above, it is clear that the respondent's primary reason for declining the petitioners' request is the ongoing subdivision of the 400-acre property intended for distribution among its members or shareholders. The respondent has neither alleged nor provided any evidence to show that, prior to her death, the deceased was not a fully paid-up member of the respondent company or that she was not entitled to a share of the property now being sub-divided. As such, there appears to be no justifiable basis for excluding the petitioners from the process.
28. It is undisputed that the Certificate of Confirmation of Grant distributed the deceased's shares in the respondent company among the petitioners, which means that the petitioners collectively inherit the deceased's original shareholding. If for instance, the deceased was entitled to a single plot measuring 40 x 80 feet from the 400-acre parcel of land based on her shareholding, the petitioners would be jointly entitled to that one plot to divide among themselves, not each being entitled to a separate plot of similar size or if entitled to move, the plots would be shared according to each petitioner's entitlement.
29. This Court finds no valid justification for the respondent's refusal to transfer the shares of the late Phylis Watau Kimani to her Estate's beneficiaries, register the petitioners as members in the Company's Register, issue them share certificates and accord them the rights and benefits due to other ordinary shareholders. I therefore hold that the respondent's continued refusal to effect the share transfer, update the membership Register, and issue share certificates constitutes oppressive and/or unfairly prejudicial conduct. This conduct is detrimental to the petitioners' interests, especially given that a valid Certificate of Confirmation of Grant was issued, lawfully distributing the deceased's shares amongst them.
30. In the end, it is my finding that the instant petition is successful. It is allowed in the following terms -
- i. The respondent is hereby compelled to transfer the shares of the late Phylis Watau Kimani to her Estate's beneficiaries as per the Certificate of Confirmation of Grant issued by the High Court in Nairobi HCFP&A No. 99 of 2011;



- ii. The respondent is hereby directed to Register the petitioners as members in the respondent company's Register;
- iii. The respondent is hereby ordered to issue share certificates to the petitioners;
- iv. Orders (i) (ii) & (iii) above shall be complied with, within 30 days from today;
- v. The respondent is hereby ordered to grant the petitioners all rights and benefits accorded to other ordinary shareholders of the respondent company; and
- vi. Costs of this petition shall be borne by the respondent.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 18TH DAY OF SEPTEMBER 2025.
JUDGMENT DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

NJOKI MWANGI

JUDGE

In the presence of:-

Mr. Muturi for the petitioners

No appearance for the respondent

Ms B. Wokabi – Court Assistant.

