



REPUBLIC OF KENYA



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**Njenga v Njenga & another (Civil Appeal 26 of 2020)
[2025] KECA 1672 (KLR) (21 October 2025) (Judgment)**

Neutral citation: [2025] KECA 1672 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CIVIL APPEAL 26 OF 2020
MA WARSAME, JM MATIVO & PM GACHOKA, JJA
OCTOBER 21, 2025**

BETWEEN

DAVIS KINYANJUI NJENGA APPELLANT

AND

MONICA WANGUI NJENGA 1ST RESPONDENT

REGISTRAR OF COMPANIES 2ND RESPONDENT

(An appeal against the judgment of the High Court of Kenya at Nakuru (M. T Matheka, J.) dated 23rd April, 2020 in Judicial Review Application No. 26 of 2019)

JUDGMENT

1. This is an appeal against the ruling of the High Court (Matheka J.) delivered on 23rd April, 2020, dismissing a judicial review application filed by the appellant, seeking to quash the decision of the 1st respondent to reduce his shares in a private company known as Njemoni Limited, from 321 shares to 21 shares.
2. Njemoni Limited, a private company limited by shares, was incorporated in the year 1991 as a family owned company by the 2nd respondent Monica Wangui Njenga and her late husband James Njenga Mathu, each holding one share out of the company's nominal share capital of 100 shares. In 1992, James Njenga Mathu transferred his share to his son, Davis Kinyanjui Njenga, the appellant herein. Following this transfer, the new directors/shareholders were Monica Wangui Njenga and Davis Kinyanjui Njenga.
3. Sometime in April 1992, the new directors/shareholders resolved to increase their share capital. The interested party was allotted 29 additional shares while the appellant was allotted 20 additional shares resulting in 30 shares for the 2nd respondent and 21 shares for the appellant.



4. According to the appellant, on 4th January 2004 during a meeting of the company, the directors resolved to increase the share capital to Kshs. 50,000, the nominal shares from 100 shares to 500 shares, and to increase his shareholding to 321 shares as compensation for a debt of Kshs. 3,000,000/= that he had paid on behalf of the company. Consequently, the requisite statement of increase of nominal capital, special company resolution, notice of increase of shares and return of allotment were filed by the company as required by law and on 25th May 2004, he was allocated an additional 300 shares by way of purchase for a consideration of Kshs.3,000,000/=
5. However, to the appellant's surprise, on or around 22nd October 2019, the registrar of companies (the 1st respondent herein) reduced his shareholding from 321 shares to 21 shares without notice, hearing, authority or lawful justification and in contravention of his fundamental rights.
6. The appellant, believing the reduction to be an administrative error caused by missing or misplaced documentation, wrote a complaint letter dated 18th October 2019, through M/S Vivian Kinyanjui Advocates, forwarding copies of receipts evidencing the share increases and allotments, together with the company's filed returns and demanded a rectification of the records. However, instead of restoring the records to their original state, the appellant contended that the 1st respondent allocated 30 shares to the 2nd respondent and 21 shares to one "David Kinyanjui Njenga" - a stranger, considering that the appellant's correct name is "Davis Kinyanjui Njenga." Ultimately, the appellant accused the 1st respondent of creating an application he never made to steal his shares and allocate them to a stranger to the company without the company's resolution.
7. Aggrieved by these actions, the appellant filed a judicial review application, the subject of this appeal, seeking an order of certiorari quashing the 1st respondent's decision to reduce the applicant's shares.
8. The 1st respondent opposed the appellant's application and maintained that in July 2018, Njemoni Limited lodged an application via the respondent's semi electronic file audit and verification system to manage the company register called Link Business, using the e-citizen account of the appellant, Davis Kinyanjui Njenga wherein he sought to have himself and the 2nd respondent linked as users to be added. The file audit and verification on Njemoni Limited was completed on 22nd August 2018 with the records indicating the following as the Director Shareholders: Monica Njenga - 30 shares and Davis Kinyanjui - 21 shares.
9. Furthermore, on 16th October 2019, one David Kinyanjui Njenga on behalf of Njemoni Limited, lodged an application for a Change in Particulars in the company for the allotment of 300 shares to himself pursuant to a meeting allegedly held on 16th October 2019 with both Monicah Njenga Wangui and David Njenga Kinyanjui in attendance. While processing the Change of Particulars application, the office of the 1st respondent in exercising due diligence proceeded to contact the 2nd respondent to verify the veracity of the transaction but she stated that she was unaware of the said allotment of 300 shares and the alleged meeting did not take place. Consequently, the 1st Respondent could not process the said application and rejected it on 16th October 2019. They subsequently received the aforementioned letter from the appellant's advocate on 18th October 2019 and a letter from the 2nd respondent dated 22nd October 2019 also seeking to ensure that the records at the registry reflect the true status of the company. Before the 1st respondent could undertake any administrative action to reconcile the dispute over the share allocation, the appellant filed the application in the High Court.
10. The 2nd respondent similarly opposed the application, maintaining that the correct shareholding position was as established in 1992, namely 21 shares for the appellant and 30 shares for herself. She contended that no company meetings were held to increase the nominal share capital or the appellant's shareholding; that the statutory returns, board resolutions, and other documents filed at the registry



pursuant to the alleged board meetings were fraudulent and constituted forgeries; that the documents filed for the alleged changes of 25th May 2004 bore the company serial number C. 49267 yet that for Njernoni Limited is C.49269 and lastly, the appellant had not provided any loan to the company that would justify an increase in his shareholding.

11. The trial court (Matheka J.) dismissed the application for judicial review on the premise that the 1st respondent acted within their statutory powers pursuant to the provisions of Section 844 of the *Companies Act*. The court found that the documents filed after the 1992 share allocation were, on their face, "incomplete and internally inconsistent" with the existing records, and that the registrar had acted appropriately to correct the record based on available authenticated documentation. Consequently, the court held that the 1st respondent had not violated the rules of natural justice, infringed the appellant's right to be heard, or acted in bad faith. The court further noted that the appellant retained the opportunity to provide proper documentation to the registrar under the same statutory provision to have the record rectified.
12. The appellant was dissatisfied with the decision of the learned trial judge and now appeals to this Court on the following condensed grounds stated in their written submissions:
 - a. Whether the 1st respondent acted ultra vires to their powers under Section 844 of the *Companies Act*;
 - b. Whether the 1st respondent breached the rules of natural justice.The appellant prays that this Court allow the appeal, set aside the impugned judgment and grant the orders that were sought in the Judicial review application.
13. When the appeal came up for hearing before us, Mr. Githui appeared for the appellant, Mr. Muriithi held brief for Mr. Kisila for the 2nd respondent and there was no appearance for the 1st respondent. Parties relied on their written submission.
14. The appellant argued that the 1st respondent acted beyond the statutory powers under Section 844 of the *Companies Act* which empowers the registrar to correct documents only under specific conditions: instructions must come from the company, be properly authenticated, and satisfy formal requirements. In this case, the registrar acted suo motu, without any instructions from Njemoni Limited, violating these statutory prerequisites.
15. Relying on *Republic v Public Procurement Administrative Review Board & 2 others Ex parte Rongo University* [2018] e-KLR, the appellant submits that the ultra vires principle requires courts to "police the boundaries stipulated by Parliament" and that administrative agencies must comply with conditions in enabling legislation.
16. The appellant further contended that the 1st respondent violated the rules of natural justice by failing to afford him a hearing before reducing his shareholding from 321 to 21 shares. Citing *Republic vs Chuka University Ex-Parte Kennedy Omondi Waringa & 16 others* [2018] eKLR, the appellant emphasized that the right to natural justice and the duty to act fairly is inherent in all decision making processes and cannot be granted after a decision has been made. The appellant invited this court to view the ultra vires doctrine in a broad sense of how the statutory power was exercised and not just in the narrow sense of legal capacity to act.
17. The appellant further faulted the trial court for fundamentally misunderstanding its role in judicial review by asking the wrong questions. Relying on *Republic v Public Procurement Administrative Review Board & 2 others Ex parte Rongo University* [2018] e-KLR, the appellant submitted that it was an error of law for the court to enter into the domain of merit review or appellate court



while considering a motion for judicial review. Instead of examining whether the 1st respondent complied with the procedural requirements under Section 844, the court ventured into determining whether company meetings and resolutions were genuine, a question of merit rather than process. The court should have evaluated the decision making process against statutory requirements, not the substantive merits of underlying company decisions. In conclusion, the respondent maintained that the documents which were under inquiry before the 1st respondent were the minutes and resolutions of 16th August 2019 (which the appellant denounced) and not the minutes and resolutions of 25th May 2004. Consequently the 1st respondent acted ultra vires by considering matters not before her. In view of these submissions, counsel urged the court to resolve the appeal in his favour.

18. The 1st respondent submitted that the central issue was whether the appellant ever legitimately held 321 shares in Njemoni Limited. The undisputed position was that as at 1992, the appellant held 21 shares while the 2nd respondent held 30 shares. Crucially, the appellant had never produced any official search from the companies registry (CR12) to support his claim of holding 321 shares. Additionally, when the appellant lodged an application to link the company to the e-citizen portal in July 2018 he captured the shareholding as 30:21 which contradicted the allegation that he was allotted 300 shares in 2004.
19. In response, the 1st respondent emphasised that no decision was made on October 16, 2019 to reduce the appellant's shareholding. Instead, the registrar simply refused to process the disputed application for 300 additional shares. This was done after an objection from the 2nd respondent and the observation that there were inconsistencies on the record. It was submitted that the trial court correctly found that the registrar acted within Section 844 of the Companies Act and did not breach the rules of natural justice
20. In addition, the 1st respondent contended that the appellant's grievance clearly stemmed from the rejection of his application to allot himself 300 shares, not from any improper process and that the dispute is essentially a merit-based complaint disguised as a procedural challenge and that the registrar properly exercised due diligence, and no infringement of the appellant's right to be heard occurred since the focus was on verifying a disputed transaction rather than making an adverse determination against established rights.
21. In line with the 1st respondent's stance, the 2nd respondent submitted the trial court properly understood and applied judicial review principles. She argued that the court correctly found there was no administrative decision capable of being quashed, as the 1st respondent simply corrected irregularities in company shareholding records pursuant to Section 844 of the Companies Act which empowers the registrar to correct incomplete or internally inconsistent documents. She submits that the registrar received conflicting information about shareholding, properly investigated by contacting stakeholders, and made corrections based on authenticated records. The 2nd respondent moved to verify and correct the dispute regarding share allocation, and when inconsistencies arose from the appellant's disputed meeting of 16th October 2019, the registrar properly exercised due diligence in refusing to process questionable transactions. Citing multiple High Court authorities including *Republic v Deputy County Commissioner, Makueni & 3 others; Matolo (Ex parte Applicant) (Environment and Land Judicial Review Case E021 of 2022) [2024] KEELC 1371 (KLR)*, she contended that judicial review requires examining whether decision-makers took relevant matters into account and followed proper procedures, not the merits of underlying disputes.
22. We have considered the record, submissions by counsel and the law. Conscious of the scope of our jurisdiction in this appeal, it is worth restating that the essence of judicial review is to set right any decisions fraught with impropriety, illegality, abuse of power, or arbitrariness. This much was



appreciated by this Court in *Mount Holding Limited vs. Mwai Limited & 9 others* [2017] eKLR in the following manner:-

“By definition, judicial review is meant to guard against excesses of power and failure to observe natural justice. In the case of *Bivac International S.A (Bureau veritas)* [2005] E.A 43; it was held that judicial review stems from the doctrine of ultra vires and the rules of natural justice; that it has grown to become a legal tree with branches of illegality, irrationality, impropriety of procedure (the 3 I’s) and has become the most powerful enforcer of constitutionalism, promoter of the rule of law and perhaps one of the most powerful tools against abuse of power and arbitrariness.”

23. Again, it settled that the function of the High Court sitting in judicial review proceedings is not to determine issues as if it is an appeal court nor is it to consider the merits of the decision by a public body but rather, it is to undertake a consideration of the procedure and processes adopted to arrive at the decision in issue so as to rule out any traits of allegations of procedural malpractices, lack of fair hearing, unreasonableness or other illegalities. See *Ransa Company Ltd vs. Manca Francesco & 2 others* [2015] eKLR. As has been stated time and time again, this jurisdiction which is like a straitjacket has very limited scope and is not amenable to expansion. All a party needs to demonstrate in order to succeed in an application for judicial review is show that the decision or act complained of is tainted with illegality, irrationality and procedural impropriety. See *Bhangra Limited v Land Registrar Mombasa & 2 others, Mbsa C.A. No. 58 of 2016*.
24. We have endeavored to set out in detail, the principles on judicial review because the gist of the appeal is that the 1st respondent acted unlawfully and against the rules of natural justice while in turn the respondents maintain that the appellant’s application did not satisfy the principles for judicial review. In a nutshell, the Appellant seeks on appeal to quash the 1st respondent’s decision to reduce his shares in *Njemoni Limited*, from 321 shares to 21 shares which was communicated on 19th October, 2019.
25. With the foregoing in mind, we are satisfied that this appeal must fail. The appellant has woefully failed to demonstrate any of the hallmarks of judicial review - illegality, irrationality, or procedural impropriety. What emerges from the record is an attempt to use the supervisory jurisdiction of the court to compel the 1st respondent to accept disputed documentation without proper verification, thereby circumventing the registrar’s statutory duty to ensure the accuracy of company records.
26. Section 844 of the *Companies Act* clearly clothes the 1st respondent with clear statutory authority to correct documents that appear incomplete or internally inconsistent. The section provides as follows:
 1. A document that is lodged with the Registrar for registration may be corrected by the Registrar if it appears to the Registrar to be incomplete or internally inconsistent.
 2. The power of the Registrar under subsection (1) may be exercised only-
 - a. on instructions that comply with subsection(3); and
 - b. if the company has given and has not withdrawn its consent to instructions being given under this section.
 3. Instructions comply with this subsection if—
 - a. they are given in response to an enquiry made by the Registrar;
 - b. the Registrar is satisfied that the person giving the instructions is authorised to do so—
 - i. by the person by whom the document was delivered; or



- ii. by the company to which the document relates;
 - c. they satisfy any requirements of Registrar's rules relating to—
 - i. the form and manner in which they are given; and
 - ii. authentication.
 4. The company's consent to instructions being given under this section or to a withdrawal of that consent—
 - a. may be given in hard copy or electronic form; and
 - b. is effective only when notified to the Registrar.
 5. A document that is corrected under this section is taken, for the purposes of any enactment relating to its lodgement, to have been delivered when the correction is made.
 27. When faced with the disputed application of 16th October 2019 for 300 additional shares, the registrar did precisely what the law required; she exercised due diligence by verifying the authenticity of the transaction with the other director. Upon discovering that the 2nd respondent was unaware of any such meeting or resolution, the registrar correctly declined to process what appeared to be a questionable application. This was not capricious action, but measured administrative response to conflicting claims.
 28. In our view, this was not a decision to reduce shares, but rather a refusal to approve an increase in shares based on questionable documentation; a distinction that is crucial to understanding the true nature of the impugned action.
 29. The 1st respondent's records are supported by a clear and consistent documentary trail that spans over two decades and aligns with the documentation maintained by the 2nd respondent. From the company's incorporation in 1991 through to 2018, the documentation tells a coherent story. The original incorporation documents show James Njenga Mathu and Monica Wangui Njenga each holding one share out of 100. The 1992 transfer to Davis Kinyanjui Njenga is properly documented, followed by the April 1992 resolution that allocated additional shares, resulting in the appellant holding 21 shares and the 2nd respondent holding 30 shares. Most significantly, this shareholding structure remained consistent and undisputed for over 25 years. Moreover, the 1st respondent maintains that the appellant himself made an application to register the company on the e-citizen portal in July 2018, declaring his shareholding as 21 shares and the 2nd respondent's as 30 shares.
 30. Even if we were to accept the appellant's implausible claims that he neither made the 2018 e-citizen application nor the 2019 application to allot shares to one "David Njenga," the red flags surrounding his alleged entitlement remain glaring. For instance, the alleged 2004 documents that supposedly evidence the allotment of 300 additional shares bear a different company registration number (C.49267) from Njemoni Limited's actual registration number (C.49269). Additionally, EMU Registrars, who purportedly prepared the 2004 statement of increase of nominal capital, notice of increase of nominal capital, and return of allotment, are not recorded as company secretaries of Njemoni Limited.
 31. More damning still, the minutes of 4th January 2004 which the appellant claims as evidence of his entitlement to 300 shares, bear the signature of the very same "David Njenga" whom the appellant now disavows as a stranger. This internal contradiction fatally undermines the appellant's credibility.

How can the appellant rely on documents signed by someone he characterizes as a stranger to establish his shareholding rights? The stark inconsistencies and the dispute by the 2nd respondent warranted the



1st respondent's rejection of the application of 19th October 2019 and maintenance of the status quo according to their records, pending further administrative action.

32. The trial judge was therefore correct in finding the post-1992 documentation to be "incomplete and internally inconsistent." The appellant's characterization of this as a "decision to reduce shares" is inaccurate to say the least. The registrar simply refused to approve an increase based on documentation that could not be verified. The distinction is not semantic but goes to the very heart of what constitutes an administrative decision amenable to judicial review. One cannot seek to quash a decision that was never made.
33. Regarding the second ground on natural justice, we find no breach. The right to be heard applies when an adverse decision affecting established rights is being made. Here, the 1st respondent was not making a determination to reduce the appellant's established shareholding, but rather refusing to process a disputed application for additional shares while maintaining the appellant's established shareholding, as reflected in their records. The registrar's action maintained this status quo rather than diminishing any established right. There was no obligation to afford a hearing before declining to process a disputed application for additional shares, particularly where the other director had disowned the purported resolution.
34. In the end, we reject the appellant's criticism that the trial court engaged in merit review. The learned trial judge properly examined whether the registrar's decision making process was legally sound. In judicial review, courts are entitled and are indeed required to scrutinize the evidentiary basis upon which administrative decisions are made. The authenticity of documentation goes directly to the reasonableness and legality of the registrar's reliance thereon.
35. In our view, the 1st respondent acted lawfully, reasonably, and in accordance with statutory requirements. Consequently, no ground for judicial review intervention has been established.

The upshot is that the appeal is dismissed with costs to the respondents.

DATED AND DELIVERED AT NAKURU THIS 21ST OF OCTOBER, 2025

M. WARSAME

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JUDGE OF APPEAL

J. MATIVO

.....

JUDGE OF APPEAL

M. GACHOKA C.Arb, FCIArb.

.....

. JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

