



Directline Assurance Company Ltd & 4 others v Business Registration Service & 10 others; AKM Investments Limited & another (Interested Parties) (Commercial Petition E016 of 2024) [2025] KEHC 15236 (KLR) (Commercial and Tax) (24 October 2025) (Ruling)

Neutral citation: [2025] KEHC 15236 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)**

**COMMERCIAL AND TAX
COMMERCIAL PETITION E016 OF 2024**

MN MWANGI, J

OCTOBER 24, 2025

**IN THE MATTER OF ARTICLES 22(1), 27, 40, &
47 OF THE CONSTITUTION OF KENYA, 2010**

**-AND- IN THE MATTER OF ALLEGED CONTRAVENTION OF
RIGHTS OR FUNDAMENTAL FREEDOMS UNDER ARTICLES 10,
19(3), 27, 40, 47, 73 & 232 OF THE CONSTITUTION OF KENYA, 2010.**

-AND-

IN THE MATTER OF THE BUSINESS REGISTRATION SERVICE ACT 2015

-AND-

IN THE MATTER OF SECTION 9 OF THE COMPANIES ACT 2015

-AND-

**IN THE MATTER OF ISSUANCE OF ILLEGAL AND FRAUDULEMNT
CR12 IN RESPECT OF DIRECTLINE ASSUARANCE COMPANY LIMITED
ON 21ST OCTOBER 2022, 10TH NOVEMBER 2022, & 22ND MAY 2023**

BETWEEN

**DIRECTLINE ASSURANCE COMPANY LTD 1ST PETITIONER
ROYAL CREDIT LIMITED 2ND PETITIONER
DR. SAMUEL KAMAU MACHARIA 3RD PETITIONER
MRS. PURITY GATHONI MACHARIA 4TH PETITIONER
TOY & SUNA HOLDINGS LIMITED 5TH PETITIONER**

AND



BUSINESS REGISTRATION SERVICE	1ST RESPONDENT
REGISTRAR OF COMPANIES	2ND RESPONDENT
SIDIAN BANK LIMITED	3RD RESPONDENT
CO-OPERATIVE BANK LIMITED	4TH RESPONDENT
NCBA BANK LIMITED	5TH RESPONDENT
INSURANCE REGULATORY AUTHORITY	6TH RESPONDENT
ATTORNEY GENERAL	7TH RESPONDENT
KINGDOM BANK LIMITED	8TH RESPONDENT
SUREINVEST INVESTMENTS LIMITED	9TH RESPONDENT
TRIAD NETWORKS LIMITED	10TH RESPONDENT
INVESTMENT PTY	11TH RESPONDENT

AND

AKM INVESTMENTS LIMITED	INTERESTED PARTY
JANUS LIMITED	INTERESTED PARTY

RULING

1. This Ruling is in respect to the issue of the 1st petitioner’s legal representation. The 1st petitioner through Andrew Mmbogori Advocate filed a Notice of Motion application dated 22nd August 2024 seeking orders for inter alia, a declaration that the law firm of Kamau Kuria & Company Advocates has no authority to purport to act on behalf of the 1st petitioner in this Petition.
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 Ms Terry Wanjiku Kiarie Wijenje, also known as Janice Theresa Wanjiku Kiarie, a Director and Principal Officer of the 1st petitioner, a majority shareholder and Director of Janus Limited, one of the 1st petitioner’s major shareholders and the 2nd interested party herein. She averred that the law firm of Kamau Kuria & Company Advocates has no authority to act for the 1st petitioner in this Petition since it has neither been appointed by the 1st petitioner’s shareholders nor ratified by its Board.
3. Ms Kiarie stated that following a resolution that was passed on 1st September 2023 by the 1st petitioner’s shareholders, the appointment of Advocates was made a preserve of the shareholders and the right to appoint Advocates was specifically assigned to AKM Investments Limited and Janus Limited, who duly appointed Andrew Mmbogori Advocate to act for the 1st petitioner in this matter. She asserted that both Shareholder and Board resolutions ratified the said appointment, and a Notice of Change of Advocates was filed accordingly. In addition, she stated that similar Board resolutions were also passed by the interested parties who resolved to appoint Andrew Mmbogori Advocate to represent them.
4. Ms Kiarie contended that the law firm of Kamau Kuria & Company Advocates was never appointed or ratified and that it acts irregularly for the 1st petitioner. She stated that Courts in previous cases including ELRC No. E004 of 2023, HC Petition No. E006 of 2023, and ELC No. 134 of 2022



- have struck out unauthorized Advocates representing the 1st petitioner. Further, that in HCCC No. E328 of 2024, the Court issued orders restraining Dr. Samuel Kamau Macharia from purporting to act for the 1st petitioner yet he continues to instruct the law firm of Kamau Kuria & Company Advocates to act for the said petitioner, amounting to contempt of Court orders. She asserted that the 1st petitioner's majority shareholders and their Board will not ratify the law firm of Kamau Kuria & Company Advocates' actions.
5. In opposition to the application, Dr. Samuel Kamau Macharia, the 3rd petitioner herein, filed a replying affidavit sworn on 5th September 2024. He averred that the interested parties are not shareholders in the 1st petitioner, and that they lack locus standi and have improperly relied on invalid CR12s and a null Arbitral Award to deceive Courts and pursue control of the 1st petitioner. He deposed that an audit by the Insurance Regulatory Authority dated 5th March 2024 shows that the interested parties are not shareholders of the 1st petitioner. For that reason, he averred that the interested parties lack the capacity to sue, to serve as Directors, or to instruct Counsel for the 1st petitioner.
 6. Dr. S.K. Macharia contended that the custodian of shareholder records is the Insurance Regulatory Authority and not the Registrar. He stated that the CR12s issued after the disputed Arbitral Award of June 2022 contravene Section 17(8) of the Arbitration Act and are thus null and void. He added that the Arbitral Award itself is under challenge in HC Misc. App. No. E250 of 2021 hence it cannot confer shareholder rights. He asserted that the aforesaid Arbitral Award wrongly attributes 90.336% shareholding to parties who legally cannot hold more than 25% under the Insurance Act.
 7. In a rejoinder, the 1st petitioner filed a further affidavit sworn on 27th January 2025 by Ms Lisa Anyango Amenya, a Director of the 1st interested party. Ms Amenya maintained that Andrew Mmbogori Advocate is the only duly authorized Counsel for the 1st petitioner, appointed by the majority shareholders and ratified by the 1st petitioner's Board. She asserted that the law firm of Kamau Kuria & Company Advocates never had authority to institute or conduct proceedings in the 1st petitioner's name and act on instructions of its minority shareholders.
 8. She averred that HCCC No. E328 of 2024 arose from alleged unlawful transfer of Kshs.400,000,000/= by the 3rd petitioner, and that Hon. Justice Mabeya vide a Ruling delivered on 4th October 2024 issued orders directing the 7th respondent therein to re-transfer the sum of Kshs.400,000,000/= to the plaintiff's account, a forensic audit of the plaintiff's books of account and constitution of a joint interim Board consisting of 2 nominees each of AKM Investments Limited, Janus Limited & Royal Media Services Limited. That Janus Limited and AKM Investments Limited complied by having Tom Otieno Odongo, Titus Muthua Karanja, Robinson Maina Mwangi and Kenneth Maina Ndura vetted and approved to sit in the interim Board, but the 3rd petitioner failed to comply by having Directors nominated or approved
 9. Ms Amenya stated that in view of the non-compliance, the 1st petitioner filed an application seeking an order that the Board consisting of the interested parties' appointees be deemed as having been fully constituted, and that Hon. Justice Mabeya in a Ruling delivered on 20th November 2024 allowed the said application as prayed. For the said reason, Ms Amenya asserted that the 1st petitioner's Board of Directors currently consists of Tom Otieno Odongo, Titus Muthua Karanja, Robinson Maina Mwangi and Kenneth Maina Ndura. She stated that the 1st petitioner's shareholders and its Court-approved Board ratified the appointment of Andrew Mmbogori Advocate and expressly revoked authority of the law firm of Kamau Kuria & Company Advocates and others.
 10. The issue of the 1st petitioner's legal representation was canvassed by way of written submissions, which were highlighted on 27th February 2025. The petitioners' submissions were filed on 23rd September



2024 by the law firm of Kamau Kuria & Company Advocates, while the 1st petitioner's submissions were filed by Andrew Mmbogori Advocate on 28th January 2025.

11. Dr. Kamau Kuria, Senior Counsel submitted that although in HCCOMMPET No. E006 of 2023 the Court delivered a Ruling on 1st March 2024 confirming that the firm of Mmbogori was properly on record for the 1st petitioner, a subsequent audit of shareholding and ownership of the 1st petitioner conducted by the Insurance Regulatory Authority on 5th March 2024 revealed that the interested parties had not obtained the requisite approval from the Commissioner of Insurance. He stated that as a consequence thereof, they were legally barred from holding more than 10% of the 1st petitioner's shareholding. Senior Counsel emphasized that the said finding was never disputed by the interested parties and that Mr. Mmbogori's client proceeded under the mistaken belief that it was a majority shareholder in the 1st petitioner.
12. Dr. Kamau Kuria submitted that under Section 105 of the *Companies Act*, the contents of a CR12 constitute prima facie evidence of a company's shareholding, in the absence of any other evidence to the contrary. He stated that the question of the 1st petitioner's shareholding is currently the subject of two arbitration-related suits, one of which is still pending before this Court. Senior Counsel submitted that the interested parties in asserting majority shareholding in the 1st petitioner rely on an Arbitral Award which the petitioners are actively seeking to set aside. He urged this Court to direct that the issue of legal representation be determined through viva voce evidence.
13. Mr. Mmbogori, Advocate relied on the case of Assia Pharmaceuticals v Nairobi Veterinary Centre Ltd HCCC No. 391 of 2000, and submitted that as Counsel instructed by the 1st petitioner's majority shareholders, his authority is binding on the company. He contended that the 1st petitioner's majority shareholders had the 3rd petitioner's appointee Directors struck off the Register and substituted them with new nominees, but the Commissioner of Insurance withheld registration of the changes pending the outcome of Phillip Alliker's Arbitral Award.
14. He stated that the 1st petitioner filed HCCC No. E328 of 2024, where Hon. Justice Mabeya on 4th October 2024 issued an order for *the constitution* of a temporary joint Board comprising nominees from AKM Investments Limited, Janus Limited and Royal Media Services, and on 20th November 2024, he further held that the Board constituted by nominees of AKM Investments Limited and Janus Limited was duly in place.
15. Mr. Mmbogori submitted that the Court-sanctioned Board formally instructed him to act for the 1st petitioner, whereas Kamau Kuria & Company Advocates purport to rely on instructions from the 3rd petitioner, a minority shareholder who is expressly enjoined from representing the 1st petitioner. Counsel argued that although the 3rd petitioner relied on an Insurance Regulatory Authority letter dated 5th March 2024 to assert authority to instruct Counsel, the letter itself still reflected the 3rd petitioner, his wife and their entities as minority shareholders, while AKM Investments Limited and Janus Limited remained the majority shareholders. He further submitted that the effect of the said letter was stayed by the Insurance Appeals Tribunal on 29th April 2024. Moreover, that the Court in HCSMSC E250 of 2021 already dismissed a similar attempt to introduce the aforesaid letter, holding that the shareholding dispute had been conclusively resolved through arbitration.
16. In a rejoinder, Dr. Kamau Kuria argued that this Court is not bound by the decisions of Hon. Justice Mabeya as both Courts exercise concurrent jurisdiction. He further submitted that being vested with unlimited jurisdiction, this Court is at liberty to disregard the determination of the Insurance Tribunal.



ANALYSIS AND DETERMINATION.

17. Upon considering the instant application, the grounds on the face of it and the affidavits filed in support thereof, as well as the replying affidavit by the petitioners and the written submissions by Counsel for the parties, the issue that arises for determination is whether the law firm of Kamau Kuria & Company Advocates has authority to act on behalf of the 1st petitioner in this Petition.

18. Order 4 Rule 1(4) of the Civil Procedure Rules, 2010, provides that-

Where the plaintiff is a corporation, the verifying affidavit shall be sworn by an officer of the company duly authorized under the seal of the company to do so.

19. The Court of Appeal in the case of Spire Bank Limited v Land Registrar & 2 others [2019] KECA 530 (KLR) addressed the import of the above provisions as follows -

It is essential to appreciate that the intention behind order 4 rule 1 (4) was to safeguard the corporate entity by ensuring that only an authorized officer could institute proceedings on its behalf. This was to address the mischief of unauthorized persons instituting proceedings on behalf of corporations, and obtaining fraudulent or unwarranted orders from the court. The company's seal that is affixed under the hand of the directors ensured that they were aware of, and had authorized such proceedings together with the persons enlisted to conduct them. And where evidence was produced to demonstrate that a person was unauthorized, the burden shifted to such officer to demonstrate that they were authorized under the company seal. With this in mind, we dare say that the provision was not intended to be utilized as a procedural technicality to strike out suits, particularly where no evidence was produced to demonstrate that the officer was unauthorized.

20. Mr. Mmbogori contended that he was instructed by the 1st petitioner's majority shareholders, whereas the law firm of Kamau Kuria & Company Advocates was instructed by its minority shareholders, hence the latter law firm has no authority to institute this Petition or act on behalf of the petitioner in this Petition.

21. It is not in contest that the issue of the 1st petitioner's shareholding is still the subject of litigation. In a Ruling delivered on 4th October 2024, Hon. Justice Mabeya directed the 7th respondent therein to re-transfer the sum of Kshs.400,000,000/= to the plaintiff's account, ordered a forensic audit of the plaintiff's books of account and sanctioned *the constitution* of a joint interim Board comprising two nominees each from AKM Investments Limited, Janus Limited, and Royal Media Services Limited. Pursuant to that order, Janus Limited and AKM Investments Limited duly complied by nominating Tom Otieno Odongo, Titus Muthua Karanja, Robinson Maina Mwangi, and Kenneth Maina Ndura, who were subsequently vetted and approved to sit on the interim Board by the Insurance Regulatory Authority. The 2nd petitioner however failed to comply by nominating or securing approval of Directors to sit on the said Board. As a result, the 1st petitioner moved the Court seeking an order that the Board constituted solely of the nominees from AKM Investments Limited and Janus Limited be deemed as properly constituted. The application was allowed by Hon. Justice Mabeya in a Ruling delivered on 20th November 2024.

22. It is also not disputed that the said Ruling has neither been varied nor set aside. While this Court concurs with Dr. Kamau Kuria's submission that decisions by Hon. Justice Mabeya on this Court are not binding since he and I exercise concurrent jurisdiction, this is not a case where I can disregard or overlook Hon. Justice Mabeya's decision as he determined the said case on the facts that were before



him, which case is not before me. Further, in sanctioning *the constitution* of the 1st petitioner's interim Board of Directors comprising four (4) nominees from AKM Investments Limited and Janus Limited and approved by the Insurance Regulatory Authority, Hon. Justice Mabeya afforded Royal Credit Limited (2nd petitioner), formerly Royal Media Services Limited, several opportunities to nominate two Directors for approval by the 11th respondent (the Insurance Regulatory Authority) to complete the temporary joint Board, but the said company failed to do so.

23. It is also noteworthy that arriving at a conclusion different from that of Hon. Justice Mabeya would only create confusion in the management of the 1st petitioner, to its detriment and that of its customers. Accordingly, I am not persuaded that the interests of justice would be served by my interference with, or issuance of a decision that would conflict with Hon. Justice Mabeya's determination on the 1st petitioner's matter on shareholding.
24. Since Hon. Justice Mabeya sanctioned *the constitution* of the 1st petitioner's interim Board of Directors comprising four (4) nominees from AKM Investments Limited and Janus Limited, and they were duly approved by the Insurance Regulatory Authority, I am satisfied that it is the said Board that holds the authority to instruct Counsel to act on behalf of the 1st petitioner and to resolve issues of institution of proceedings in the 1st petitioner's name.
25. In the case of Bugerere Coffee Growers Limited v Sebaduka & another [1970] EA 147 cited by the Court in the case of Nextgen Mall Management Company Limited v Netcom Investments Limited & Souk Bazaar Limited [2021] KEHC 5071 (KLR) it was held –
- ...when companies authorize the commencement of legal proceedings a resolution or resolutions have to be passed either at a company or Board of Directors; meeting and recorded in the minutes; no such resolution had been passed authorizing these proceedings...
26. Since it is not in contest that Andrew Mmbogori Advocate was duly appointed and/or instructed by the Court-approved Board, I am persuaded that he is duly instructed by the 1st petitioner to act for it in this petition.
27. It is therefore my finding that Andrew Mmbogori Advocate is properly on record for the petitioner in this petition, whereas the law firm of Kamau Kuria & Company Advocates is improperly on record for the 1st petitioner. The costs attendant to this Ruling shall be in the cause.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT NAIROBI ON THIS 24TH DAY OF OCTOBER 2025.
RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

NJOKI MWANGI

JUDGE

In the presence of:-

Mr. MMBogori for the 1st petitioner/applicant

Mr. Brian Mwenda holding brief for Dr. Kamau Kuria for the 2nd, 3rd and 4th petitioners/respondents

Ms Mululu for the 4th & 8th respondents

Mr. Adan holding brief for Mr. Kiragu Kimani for the 9th & 10th respondents

Mr. Gitumu holding brief for Ms Ndumia for the 11th respondent



Mrs Wambugu for the 1st interested party

Ms. B.Wokabi – Court Assistant.

