



Hongxiu v Perfect Purity Gases Ltd; Hengting (Interested Party) (Miscellaneous Application (OS) E160 of 2024) [2025] KEHC 15611 (KLR) (Civ) (30 October 2025) (Ruling)

Neutral citation: [2025] KEHC 15611 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
MISCELLANEOUS APPLICATION (OS) E160 OF 2024
JN MULWA, J
OCTOBER 30, 2025**

BETWEEN

LIU HONGXIU APPLICANT

AND

PERFECT PURITY GASES LTD RESPONDENT

AND

WANG HENGTING INTERESTED PARTY

RULING

1. By an Originating Summons (OS) dated 01/03/2024, Liu HongXiu (hereafter the Applicant) seeks the following orders against Perfect Purity Gases Ltd (hereafter the Respondent) and Wang Hengting (hereafter the Interested Party):-
 - a. That the honorable Court do order the Company Secretary to rectify the company membership names by deleting the name of Wang Hengting who is no longer a member of the company;
 - b. That the honorable Court do order the Company Secretary to rectify the company membership by adding twenty (20) shares to Liu HongXiu;
 - c. That the honorable Court do order that the membership changes in (a) and (b) above be filed at the Company Registration Office within seven (7) days;
 - d. That the company registration office do effect the membership changes within seven (7) days from date of filing;
 - e. Costs of the suit; and



- f. Any other relief that the honorable Court may deem fit and just to grant.
2. The summons is premised on the provisions of Rule 7 of the Companies Rules with the grounds thereto being amplified by the supporting affidavit sworn by Liu HongXiu on even date, who cites being a director and shareholder of the Respondent thus competent to depose the affidavit. He deposes that Wang Hengting has since migrated back to his home country of China with no prospects of returning however the latter unfortunately did not sign a share transfer document before his departure nor did he legally delegate his representation in the Defendant. That he has tried to reach out to Wang Hengting to finalize the transfer process to no avail whereas the Respondent members held a meeting on 09/06/2023 whereby it was agreed that Wang Hengting and another director be removed as company directors.
 3. The Applicant asserts being desirous of completing the transfer of shares to enable faster company management therefore it is in the interest of the company that the transfer of shares is effected at the company registry and the change in membership reflected on the CR12. In conclusion, he deposes that it is necessary that the Court does intervene and grant the orders as sought for in the OS.
 4. The Respondent/Defendant opposes the OS through a replying affidavit sworn by John Maina Mburu dated 15/05/2022, who cites being the Company Secretary of the Respondent /Defendant company. He states that the Respondent was incorporated on 18/10/2018 wherein Wang Hengting held twenty (20) ordinary shares. He confirms that Respondent members held a meeting on 09/06/2023 for the removal of Wang Hengting and Aly Kenawy Hussein Saad as directors of the Respondent since the former resides in China and the latter does not actively participate in the day to day management of the Defendant. That he is alive to the fact, through an extract of the minutes attached to the summons, that Wang Hengting the Interested Party agreed to transfer his shares to the Applicant without any consideration. He goes on to state that since Wang Hengting relocated to China, he has been unable to reach him to confirm the position regarding the transfer of his shares to the Applicant whereas for the transfers to be effect, a duly executed share transfer form ought to be lodged with the Business Registration Services (BRS) in order for the change to be effected. In summation, he stands guided and or will comply with the directions of the Court with respect to the transfer of Wang Hengting shares.
 5. Wang Hengting/Interested party through his replying affidavit dated 07/04/2025 appears to oppose the summons. He confirms being a shareholder of the Respondent company having subscribed and subsequently been allotted twenty (20) shares. He denies having entered into any agreement with the Applicant, or any other person for the transfer of his shares held in the Defendant, let alone without consideration.
 6. He further states that the Applicant has not exhibited any such agreement on transfer of his shares as the Applicant was not a party to the minutes annexed to the summons, to wit, the same does not amount to a binding contract capable of enforcement. He states that the instant proceedings do not disclose a cause of action thus constitutes an abuse of the Court process. He concludes by taking issue with the Defendant's response by stating that he had duly instructed his advocate on record to write to the Defendant's Company Secretary regarding his shares with the Respondent and the possibility of offering his shares for transfer hence it is untrue that his position is unknown.
 7. Directions were taken on disposal of the OS by way of written submissions. Only the Applicant and Interested Party complied. That said, the Court has considered the rival affidavit material and submissions filed by the respective parties and thus postulates that the issue for determination as -:
 1. Whether the honorable Court ought to allow the application as lodged?



Whether the honorable Court ought to allow the application as lodged?

8. What concerns the motion as presented for determination before this Court concerns rectification of the Defendants register as held at the Registrar of Companies by way of an order of this Court. A Court's power to issue an order in the effect of rectification of a company's registrar, on application by a member, is codified in Section 103 of the Company's Act, which provides that -;
- (1) If—
 - (a) the name of any person is, without sufficient cause, entered in or omitted from the register of members of a company; or
 - (b) the cessation of membership of a person who has ceased to be a member of the company has not been entered in that register, the person affected, or the company or any member of the company, may apply to the Court for rectification of the register.
 - (2) On hearing an application made under subsection (1), the Court shall either refuse the application or order rectification of the register and payment by the company of any damages sustained by any party affected by the error or its failure.
 - (3) On hearing such an application, the Court may—
 - (a) decide any question relating to the title of a person who is a party to the application to have the person's name entered in or omitted from the register, whether the question arises between members or alleged members, or between members or alleged members on the one hand and the company on the other hand; and
 - (b) generally, decide any question that it considers should be decided in order to rectify the register.
 - (4) In the case of a company required by this Act to lodge a list of its members with the Registrar, the Court, when making an order for rectification of the register, shall by its order direct notice of the rectification to be given to the Registrar, who shall on receipt of the notice make such adjustments to the Register as the Registrar considers appropriate.
9. As to the nature of an application for rectification the same was succinctly discussed by Gikonyo, J. in *Suryakant Bhailalbhai Patel & 2 others v Moses Sekenya Kulundu & 4 others* [2014] KEHC 1317 (KLR), to wit I concur with that -:

- “(4) There is ample judicial authorities as well as respected literally works on the scope of jurisdiction and power of court in determining applications for rectification of register of members of a company. First, the jurisdiction to rectify register by court is discretionary albeit the discretion must always be exercised in accordance with the law; not whimsically; not capriciously. Therefore, the first consideration in the exercise of discretion under section 118 of the *Companies Act* is; the procedure is a summary process and should be invoked only in clearest of cases. See the case of *Prab Hualal Tejpa Haria & another v Pravin Chandra Meghji Dodhia & 2 others* [2007] eKLR, where Warsarme J (as he then was) expressed himself that; “In my view the summary powers of the court can be invoked in plain and clear cases, where there is no need for a trial..... The powers under section 118 of the company's Act



cannot be invoked when there is a real and complicated dispute as to the real interests of the parties.”

10. Here, the Applicant asserts that the Interested Party agreed to transfer his twenty (20) percent share to the Applicant without consideration and in so doing relies on Annexure BA-2. A cursory review of the annexure BA-2 it appears to be notarized transcribed proceedings of an oral interview between the Interested Party, one Wu Jun and one Zhu Yi. The Interested Party has assailed the said notarized transcribed proceedings that the latter does not constitute a binding agreement whereas the Applicant was not a party to the minutes annexed to the summons.
11. While the Respondent through its company secretary states that a meeting of the Defendant’s shareholders and directors was held on 09/06/2023 wherein it was resolved in Min 03/09/06/2023 (Annexure BA-3) to remove the Interested Party on grounds that he moved to China and never visits Kenya, the latter has since assailed the said reason by arguing that it is untrue that he is unavailable as contended whereas he has since communicated through his counsel on whether his shares are available for taking up.
12. Applying my mind to material facts of this case, adduced in support thereof and dicta in Suryakant Bhailalbai Patel (supra), while the notarized transcribes proceedings as between the Interested party and two (2) other persons appears to capture a consensus of the former seemingly agreeing to transfer his shares, the same was neither a contract nor an agreement between the Interested Party and Liu HongXiu, and the latter who is the Applicant. The transcription therein refers to one Guan Ya and not Liu HongXiu. In any event the same was not a binding agreement between the Interested Party and Guan Ya or Liu HongXiu, towards disposal of his shares. In any event, the Interested Party through these proceedings appears to express unwillingness to dispose of his shares without any consideration.
13. It warrants mentioning that in the course of proceedings a chamber summons application dated 01/06/2024 was filed by the Applicant seeking to substitute the Applicant with Guan Ya, the said application was never heard or disposed of in any way. While the record of proceedings does refer to an application filed by the Applicant dated 06/07/2024, this Court notes, by perusal of the CTS, that no such application was ever uploaded on the Case Tracking System (CTS) or physically filed before this Court.
14. Invariably, it does appear that some form of negotiation in respect of the Interested Party’s shares as being transferred to Guan Ya, however the motion as presented was filed by one Liu HongXiu who was neither the subject of negotiation and or any agreement arrived at towards transferring the Interested Party’s shares to one Liu HongXiu. Compounded by the above it is quite peculiar that the Respondent’s Company Secretary would impute incommunicado status of the Interested Party, yet the very same party files a motion for joinder and vehemently disputes his incommunicado status and or whether the notarized transcribed minutes constitutes a binding agreement between the himself and one Guan Ya or Liu HongXiu.
15. In the end the Court is not convinced by the Originating Summons application filed by the Applicant, and accordingly it is dismissed with no order as to costs given that the matter involves members of the same company.

Orders Accordingly.

DELIVERED DATED AND SIGNED AT NAIROBI THIS 30TH DAY OF OCTOBER, 2025.

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JANET MULWA.



JUDGE

