



1. The Application that is before this court for determination is the one dated 28<sup>th</sup> October 2025 wherein the Exparte Applicant is seeking the following **ORDERS**: -

1) ...spent.

2) That this Honourable Court be pleased to grant leave to the *ex-parte* Applicant to file an Application for judicial review seeking the following orders:

a) An Order of Certiorari to bring into this Honourable Court for the purposes of being quashed the decision and/or administrative action of the Respondent purporting to remove the ex- parte Applicant from the register of directors of the following companies.

i) ALP Management Kenya Limited (PVT/2016/029470)

ii) ALP North Limited (PVT/2016/024538)

iii) ALP North Two Limited (PVT-8LU7KZV)

iv) ALP North Three Limited (PVT-AJUX769)

v) ALP West Limited (PVT/2016/033213)

vi) ALP West Two Kenya Limited (PVT-Y2UZ8J3)

vii) ALP West Three Kenya Limited (PVT-RXUA8M7)

viii) ALP BTS One SEZ Limited (PVT-6LUKZRQJ)

- ix) ALP West Management Company Limited (PVT-DLULPV7M.
  
- b) An Order of Mandamus compelling the Respondents to unconditionally reinstate the name of the Applicant back to directorship and or register of directors of the Interested Parties and or companies listed below;
  - i. ALP Management Kenya Limited (PVT/2016/029470)
  - ii. ALP North Limited (PVT/2016/024538)
  - iii. ALP North Two Limited (PVT-8LU7KZV) iv. ALP North Three Limited (PVT-AJUX769)
  - iv. ALP West Limited (PVT/2016/033213)
  - v. ALP West Two Kenya Limited (PVT-Y2UZ8J3)
  - vi. ALP West Three Kenya Limited (PVT-RXUA8M7)
  - vii. ALP BTS One SEZ Limited (PVT-6LUKZRQJ)
  
  - viii. ALP West Management Company Limited (PVT-DLULPV7M.
  
- c) An Order of Prohibition do issue restraining the 1<sup>st</sup> and 2<sup>nd</sup> Respondents from effecting any further changes in the directorship or shareholding structures of the above-named companies without affording the Applicant notice and a fair opportunity to be heard.
  
- 3) That the leave so granted does operate as stay of and an order restraining the Respondents from registering, processing, or

effecting any further changes to the directorship of the Interested Parties or accepting any filings concerning the said companies.

4) That the costs of this Application be provided for.

### **The Applicant's Case;**

2. The Applicant argues that he was an employee of the Interested Parties at all material times when the cause of action herein arose.
3. It is his case that he had been employed by the Interested Parties under a contract which enabled him to achieve and gain the status of directorship in the Interested Parties.
4. He argues that the Interested Parties deliberately omitted to inform the Court that the ex parte Applicant is a shareholder in the Interested Parties' parent company, Africa Logistics Property Holdings Limited.
5. He argues that on 26<sup>th</sup> September 2023, the 1<sup>st</sup> Interested Party purported to terminate his employment on the grounds of redundancy. However, the process failed to comply with Section 40(1) of the Employment Act, having been carried out without consultation, fair hearing or objective justification.
6. He further argues that in addition, the 1<sup>st</sup> Interested Party breached its contract with him relating to profit sharing and/or equity participation.

7. He is aggrieved that the Interested Parties terminated his services on the ground of redundancy and ignored or left the issue of his directorship unresolved.
8. He is concerned that the companies have failed and refused to notify him of the transactions that are going on.
9. He argues that due process was not followed when terminating his services and his rights as a director of the Interested Parties have been violated.
10. He in particular argues that the Interested Parties have kept him in the dark on the matters concerning the sale of their properties and all the sale proceeds have not been disclosed to him.
11. The Applicant is also aggrieved since the Interested Parties unilaterally went ahead and convened a special general meeting and even proceeded to remove his name from the register at the Registrar of Companies office without his approval or knowledge.
12. It is his case that following this purported termination, the 1<sup>st</sup> Interested Party requested him to voluntarily resign from his position as Director. Due to his dispute with the 1<sup>st</sup> Interested Party, he declined and made several good-faith attempts to engage the Company through multiple written communications to find an amicable resolution.
13. He argues that these attempts were ignored and in June 2025 he discovered that he had been fraudulently and unlawfully removed

from directorship without his knowledge, participation, or adherence to due process as required under the Companies Act 2015.

- 14.** At the material time, the Interested Parties were fully aware that he had no access to his official work email or the 1<sup>st</sup> Interested Party's office postal correspondence having been locked out of both following his contested redundancy in September 2023. Notably, as recently as 17<sup>th</sup> November 2023 at 16:57, the Interested Parties then CEO, Mr. Richard Hough, was communicating directly with him via his personal G-mail address, clearly acknowledging it as the active and appropriate channel for formal communication. Yet, less than four weeks later, the Company chose to serve the critical notices via inaccessible internal systems, a decision that appears calculated to deny the Applicant his rights and to circumvent transparency in the process.
- 15.** According to him ,the Interested Parties actions were inconsistent with the requirements under the Companies Act, particularly Section 139 requiring proper notice and participation in meetings involving director removal; Section 141 requiring a valid resolution passed at a properly convened meeting and Section 872 criminalizing the submission of false or misleading statements or documents to the Registrar of Companies.
- 16.** He's further aggrieved because the Interested Parties are in the process of disposing of their assets without including him albeit the fact that he is a director.

17. He admits that there is a pending case questioning the lawfulness of this termination and the breach of contract is currently the subject of ongoing litigation in **ELRCC/E866/2024: Asbury Maruza Chikwanha v ALP Management Kenya Limited & Africa Logistics Properties Holdings Limited.**
18. He argues that the present Application is centrally about his fraudulent removal as a director in the Interested Parties which he was not aware of at the time he filed ELRC E866 of 2024.
19. He argues that defence of sub-judice should fail because the relief sought in this Application is materially different from the relief sought in the ELRC.
20. It is his case that in this matter he is seeking the relief arising from his fraudulent removal as a director to restore his directorship and prevent further potentially fraudulent or irregular filings or dealings with the Interested Parties rather than relief from the unfair termination and breach of contract which is the subject matter in ELRC E866 of 2024.
21. He argues that he brought his fraudulent removal as a director case to the Court's notice in ELRC E866 of 2024 to illustrate the bad faith and illegal behavior demonstrated by the 1<sup>st</sup> Interested Party in its dealings with him rather than as an issue for determination.
22. In his further affidavit, it is his case that the Replying Affidavit omits to mention that he is a shareholder in the Interested Parties' parent company.

- 23.** He argues that there is no provision in the Companies Act or any other law, rule or regulation in the Republic of Kenya that permits a company to fraudulently strip an individual of their role as a director of a company if their employment with the said company ends.
- 24.** He argues that the issues of directorship and employment are two separate matters and the Interested Parties were at liberty to approach a court of competent jurisdiction to obtain orders to remove him as a director if there was a legitimate legal basis to do so.
- 25.** He further argues that the director's position is statutory, regulated by the Companies Act, and not automatically extinguished by the cessation of employment unless he resigns or he is lawfully removed through a properly convened meeting with valid notice and participation.
- 26.** In his submissions he submits that, The Companies Act, 2015, in particular Sections 139(2), 141(1) and (2), requires that a director proposed for removal must receive proper notice of the meeting, have an opportunity to participate, and that a resolution to remove the director must be passed at a validly convened meeting. These requirements are mandatory and any deviation is unlawful.
- 27.** He further submits that The Interested Parties allege that notices were sent to the Applicant's former work email and the company postal address which were the email and postal addresses held by the 2nd Respondent in its records. However, evidence demonstrates that the Applicant had no access to these channels following his unfair termination.

28. He further submits that critically, the Interested Parties had previously communicated with the Applicant via his personal Gmail account, confirming that they were aware of how to reach him. The deliberate exclusion of accessible channels and reliance on inaccessible ones demonstrates procedural manipulation.
29. He submits that the removal of the Applicant that failed to comply with statutory notice and participation requirements in Sections 139(2), 141(1) and (2) of the Act.

### **The Interested Parties' Case;**

30. On their part, in opposing the Application, the Interested Parties filed grounds of opposition and a Replying Affidavit.
31. It is their case that the issues raised in the Application are substantively in issue in a pending case **Nairobi ELRC E866 of 2024** and therefore this case is *sub judice*. It is their case that this court is prohibited from dealing with the matters raised in the Application pursuant to **Section 6** of the Civil Procedure Act.
32. The Interested Parties argues that the Application is made in bad faith, is frivolous, vexatious and should be dismissed with costs.
33. The Interested Parties believe that the Applicant has not proven that he is entitled to the orders sought.

### **Analysis and determination;**

The issue for determination is whether the Application for leave to institute Judicial Review proceedings can be granted.

**34. The Court of Appeal in *Barclays Bank of Kenya vs Pyritic Guards Limited* [2015] eKLR, stated that:**

*“It is also trite law that a point of law can be raised at any stage, even though not raised before the court of first instance. The Court can also on its own motion raise a point of law at any point and make a determination based on the same even where such point has not been canvassed by the parties. The learned judge did not therefore do anything outrageous by raising the issue of non-compliance with Regulation 79 of Table A of the Companies Act and acting on it.” (Emphasis added)*

*[37] It is, therefore a basic rule of procedure that jurisdiction must exist when the proceedings are initiated. Because the question of jurisdiction is so fundamental, a limitation on the authority of the court, it can be raised at any stage of the proceedings by any party or even by the court suo motu. As a matter of practice, this Court has a duty of jurisdictional inquiry to satisfy itself that it is properly seized of any matter before it.*

*[38] It is a settled legal proposition that conferment of jurisdiction is a legislative function and it can only be conferred by the Constitution or statute. It cannot be conferred by judicial craft. See *Samuel Kamau Macharia & Another v Kenya commercial Bank & 2 Others*, SC Application No. 2 of 2011; [2012] eKLR. Nor can parties, by consent confer on a court power it does not have.”*

**35. In Republic v Registrar of Companies & 2 others; Waterfront Outlet Limited (C.147966) (Interested Party); Waterfront Outlets Limited (CPR/2015/214503) (Exparte) (Miscellaneous Application E059 of 2022) [2023] KEHC 227 (KLR) (Judicial Review) (19 January 2023) (Ruling) wherein the court held:-**

*“Suffice to note that even with the expanded scope of judicial review under the new constitutional dispensation, judicial review still remains a special jurisdiction that is majorly restricted to examination of whether an administrative decision conforms to the requirements of legality, rationality and procedural propriety. It is opportune to add that the judicial review process cannot be a substitute to statutorily provide for jurisdiction of other courts or bodies and the judicial review court cannot and should not assume jurisdiction where statute clearly places jurisdiction at the door of another court or body. To echo the words of the Supreme Court in Samuel Kamau Macharia v Kenya Commercial Bank & 2 Others (supra), “ A court’s jurisdiction flows from either the Constitution or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate itself jurisdiction exceeding that which is conferred upon it by law.” It is this court’s finding and I so hold that this court lacks the jurisdiction to determine this suit”*

**36. In Republic v Registrar of Companies & 5 others Exparte Midlands Company Limited [2019] eKLR the court held that;**

*“38. Secondly, there are alternative fora that are more appropriate to resolve the factual disputes raised in this Application, such as the Civil or Commercial Division of the High Court, where no restrictions or limitations exist as those that arise in judicial review”*

- 37.** Section 11(1) of the High Court (Organization and Administration) Act provides that for purposes of promoting effectiveness and efficiency in the administration of justice and promoting judicial performance, the Chief Justice may, where the workload and the number of judges in a station permit, establish any of the following divisions—
- i. the Family and Children Division;
  - ii. the Commercial Division;
  - iii. the Admiralty Division;
  - iv. the Civil Division;
  - v. the Criminal Division;
  - vi. the Constitutional and Human Rights Division;
  - vii. the Judicial Review Division; and
  - viii. any other division as the Chief Justice may, on the advice of the Principal Judge determine.
- 38.** Given that this is a leave Application, the court has reminded itself that it must not delve into the merits of the case.
- 39.** From his affidavits this court picks the fact that the Applicant is aggrieved by the fact that the Interested Parties have left the issue of his directorship unresolved after declaring him redundant.

- 40.** He is also concerned that the companies refused to notify him of the transactions that are going on.
- 41.** He argues that his rights as a director of the Interested Parties have been violated.
- 42.** He in argues that the Interested Parties have kept him in the dark on the matters concerning the sale of the companies properties.
- 43.** The Applicant is also aggrieved since according to him the Interested Parties unilaterally went ahead and convened a special general meeting and even proceeded to remove his name from the register at the Registrar of Companies office without his approval or knowledge.
- 44.** He has also raised an issue of voluntarily resignation from his position as Director.
- 45.** He argues that he was fraudulently and unlawfully removed from directorship without his knowledge, participation, or adherence to due process as required under the Companies Act 2015.
- 46.** He argues that the 1<sup>st</sup> Interested Party chose to serve the critical notices via inaccessible internal systems, a decision that appears calculated to deny the Applicant his rights and to circumvent transparency in the process.
- 47.** This court notes that according to the Applicant, the present Application is centrally about his fraudulent removal as a director in the Interested Parties.

- 48.** The Applicant argues that the Interested Parties actions were inconsistent with the requirements under the Companies Act, particularly Section 139 requiring proper notice and participation in meetings involving director removal.
- 49.** This court notes that according to him, Section 141 requiring a valid resolution passed at a properly convened meeting and Section 872 criminalizing the submission of false or misleading statements or documents to the Registrar of Companies.
- 50.** Parties are bound by their own pleadings. The Applicant has through his pleadings demonstrated that he is moving this case for purposes of advancing a Company related dispute.
- 51.** The judicial review's court focuses on the procedure, the process, the legality or illegality in how the decision maker arrived at the impugned decision. The court's mandate is to find out whether the decision maker acted with the rationality that befits the situation.
- 52.** The judicial review court has no capacity to call witnesses to testify. This court cannot carry out a merit analysis which the Applicant in this case will call for if the court is to determine the issues of shareholding, issuance of notices, the way the Interested Parties inter Alia. This court declines to allow that.
- 53.** This court is satisfied that what the Applicant is seeking are reliefs that cannot be granted by this court as a result of which this court lacks jurisdiction to preside over this suit.

**54.** The Supreme Court Case of **Dickson Ngigi Ngugi v Commissioner of Lands S.C Petition No. 9 of 2019 [2019] eKLR** stated;

*“[36] Jurisdiction goes to the root of any cause or dispute before a court of law. A court must exercise restraint to avoid overstepping its constitutional role in order to maintain its legitimacy. If a court has no jurisdiction, a judgment rendered therein does not adjudicate the dispute. It does not bind the parties, nor can it be made the foundation of any right. It is a nullity without life or authority. In short, it is coram non judice and amounts to a nullity because, as Nyarangi, JA famously said in the locus classicus, Owners of the Motor Vessel “Lillian S” v Caltex Oil, (Kenya) Ltd [1989] KLR 1, “jurisdiction is everything. Without it, a court has no power to make one more step”.*

**55.** Having found that the court lacks jurisdiction.

**Order;**

This suit is hereby struck out with costs.

**Dated, signed and delivered at Nairobi this 8<sup>th</sup> Day of December 2025.**

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**J. CHIGITI (SC)**

**JUDGE**

