

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

COMMERCIAL AND TAX DIVISION

HCCOMM. MISC NO. E167 OF 2025

ZAHRA SIGN SYSTEMS LIMITED.....1ST

APPLICANT

KEZERALI K.H. KARIMBHAI.....2ND

APPLICANT

-VERSUS-

HUZEFA K. KURBAN.....

.....RESPONDENT

RULING

1. The Applicant has by a Certificate of Urgency moved this Honourable Court vide a Notice of Motion Application dated 24th January 2025 filed under Order 51 of the Civil Procedure Rules, Section 83(1) and Section 140 of the Companies Act, 2015 and it seeks the following orders:-

1) Spent

2) THAT the Respondent is removed from the Company Records.

3) THAT the shares that have been relinquished by the Respondent be transferred back to the 1st Applicant.

4) THAT the Deputy Registrar is granted the power to authorize the transfer of shares and any other transaction with respect to this application on behalf of the Respondent.

5) THAT the costs of this application be provided for.

2. The Application is supported by the grounds set out therein and the supporting affidavit of KEZERALI K.H. KARIMBHAI sworn on 24th January 2025 and a supplementary affidavit sworn on 22nd April 2025. The application is opposed and the Respondent, HUZefa K. KURBAN has sworn a replying affidavit on 24th March 2025. The matter was canvassed by written submissions which were filed on the directions issued by this court and which I have carefully considered.

Analysis and Determination

3. Upon careful consideration of the pleadings and the rival submissions filed by the parties, I note that what the Applicant seeks from the court is an order directing the Deputy Registrar to sign a transfer of the shares held by the

Respondent back to the 1st Applicant. The Applicant argues that the Respondent voluntarily resigned from the company as a director and agreed to return the shares held by him back to the Company. The Applicant further argues that despite the said offer to return the shares the Respondent has refused, declined and neglected to sign the share transfer forms made available to him and that their said action of refusal has frustrated the operations of the Company and negatively impacted its day to day running. The Applicants urge the court to order that the share transfer forms be signed over by the Deputy Registrar to enable the Company update its records in accordance with the requirements of the Companies Act.

4. The Respondent has opposed this application and filed a replying affidavit in response thereto. The Respondent confirms having resigned from the directorship of the Company albeit under duress and coercion and accuses the 2nd Applicant having orchestrated the same to force him out of the company. The Respondent however denies having received any shares as a gift and asserts that he is legally the owner of the said shares and remains a shareholder of the 1st Applicant.

5. In addition, the Respondent accuses the 2nd Applicant of having unilaterally taken over the affairs of the 1st Applicant and that he has instituted the present suit without the authority of other directors or shareholders of the company. The Respondent further avers that no resolution approved by the Board of directors or the shareholders at an annual general meeting of the company.

6. I have considered carefully the pleadings and the rival submissions filed herein. I am live to the fact that shares held in a company amount to property. Article 40 of the Constitution of Kenya has set out the right to property as a fundamental right and freedoms to whom all Kenyan citizens are guaranteed.

7. The said Article 40 provides as follows:-

“(1) Subject to Article 65, every person has the right, either individually or in association with others, to acquire and own property--

(a) of any description; and

(b) in any part of Kenya.

(2) Parliament shall not enact a law that permits the State or any person--

(a) to arbitrarily deprive a person of property of any description or of any interest in, or

right over, any property of any description;
or

(b) to limit, or in any way restrict the
enjoyment of any right under this Article on
the basis of any of the grounds specified or
contemplated in Article 27 (4).

(3) The State shall not deprive a person of property of any description, or of any interest in, or right over, property of any description, unless the deprivation--

(a) results from an acquisition of land or an interest in land or a conversion of an interest in land, or title to land, in accordance with Chapter Five; or

(b) is for a public purpose or in the public interest and is carried out in accordance with this Constitution and any Act of Parliament that--

(i) requires prompt payment in full, of just compensation to the person; and

(ii) allows any person who has an interest in, or right over, that property a right of access to a court of law.

(4) Provision may be made for compensation to be paid to occupants in good faith of land acquired under clause (3) who may not hold title to the land.

(5) The State shall support, promote and protect the intellectual property rights of the people of Kenya.

(5) The rights under this Article do not extend to any property that has been found to have been unlawfully acquired."

8. The present application seeks to have the property of the Respondent herein transferred back to the Company despite his protestation. The court notes that the Applicant has moved this court in a summary procedure and hence denying this court the opportunity to interrogate the facts herein through taking of evidence since the voluntary transfer of the shares has been denied. It is therefore my finding that the orders that this court is being called to grant have far reaching ramifications as they shall amount to a violation of rights guaranteed by the Constitution which is the supreme law of this land. The said orders cannot therefore be granted whimsically. The court therefore declines the invitation to do so in a summary procedure through a miscellaneous application.

Conclusion and Disposition

9. In conclusion the court finds and hold that the present application is without merit. The application is therefore dismissed with costs to the Respondent.

DATED SIGNED and DELIVERED virtually at NAIROBI this 11th DAY of DECEMBER 2025

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J.W.W. MONG'ARE
JUDGE

IN THE PRESENCE OF:-

1. Ms. Tracy Odhiambo for the Applicants.
2. Mr. Maranga for the Respondent.
3. Ivan - Court Assistant