

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL AND TAX DIVISION
HCCOMM NO. E063 OF 2025

STEVE MIANO.....PLAINTIFF/APPLICANT **MWAI**

VERSUS

GEORGE NGARUIYA NJOMBAI....1ST
DEFENDANT/RESPONDENT
THE REGISTRAR OF COMPANIES.....2ND
DEFENDANT/RESPONDENT

AND

SOSMO GENERAL CONTRACTORS LTD.....1ST **INTERESTED**
PARTY/RESPONDENT
ELIZABETH WANGARI KAMAU.....2ND **INTERESTED**
PARTY/RESPONDENT

RULING

1. Before the Court is the Notice of Preliminary Objection dated 6th March 2025, raised by the 1st Defendant and the 1st and 2nd Interested Parties, challenging the jurisdiction of this Court to entertain the Plaintiff/Applicant’s Notice of Motion dated 31st January 2025 and the suit herein.

2. The Preliminary Objection is premised on the grounds, inter alia, that this Court lacks jurisdiction by reason that the dispute concerns rectification of the register of companies and change of directorship, matters which, according to the objectors, fall within the statutory mandate of the Registrar of Companies under Section 862 of the Companies Act, 2015. It is further contended that the Plaintiff failed to exhaust the available statutory and administrative remedies before approaching the Court, rendering the proceedings incurably defective and an abuse of the Court process.
3. The Plaintiff/Applicant opposed the Preliminary Objection through written submissions, contending that the objection does not raise a pure point of law, that the Court retains concurrent jurisdiction, and that the doctrine of exhaustion is inapplicable in the circumstances of this case.

Analysis and determination

4. Having considered the Notice of Preliminary Objection, the rival submissions, and the authorities cited, the sole issue for determination is whether the Preliminary Objection is merited.
5. The legal threshold for a preliminary objection is settled. In **Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd (1969) EA 696**, the Court held that a preliminary objection consists of a pure point of law which is argued on the assumption that all facts pleaded by the other

side are correct, and which, if successful, disposes of the suit without the need for evidence.

6. It is trite law that a preliminary objection cannot therefore be founded on disputed facts, nor can it be sustained where the Court is invited to interrogate contested factual matters or to exercise judicial discretion.
7. The Objectors' case is anchored on Section 862 of the Companies Act, 2015, which empowers the Registrar of Companies, upon application, to rectify the register where an entry is shown to be invalid, inaccurate, or derived from forgery or misrepresentation. They argue that the Plaintiff's grievance ought first to be ventilated before the Registrar.
8. While Section 862 indeed establishes a statutory mechanism for rectification of the register, the provision does not expressly oust the jurisdiction of the High Court. On the contrary, Section 863 of the Companies Act expressly contemplates court intervention by recognizing rectification "by order of the Court", thereby affirming concurrent jurisdiction.
9. More fundamentally, the Plaintiff's pleadings allege illegality, fraud, procedural impropriety, and complicity on the part of the Registrar in effecting the impugned changes. Determining whether the Registrar is seized of the matter, whether a valid application under Section 862 exists, and whether the Registrar acted lawfully are all contested factual issues requiring evidentiary interrogation.

10. The Courts have consistently held that where the resolution of a preliminary objection requires ascertainment of facts, such an objection will collapse. In **Oraro v Mbaja [2005] 1 KLR 141**, the Court stated that a preliminary objection must not deal with disputed facts and must not derive its foundation from factual information which stands to be tested by evidence.
11. Similarly, in **Republic v Registrar of Companies & another; Waterfront Outlets Limited (Interested Party) [2023] eKLR**, the Court held that disputes involving allegations of fraud, forgery, and illegality in company records are not amenable to summary disposal through a preliminary objection.
12. On the doctrine of exhaustion, the Supreme Court in **United Millers Limited v Kenya Bureau of Standards & 5 Others [2021] KESC 72 (KLR)** clarified that exhaustion is not an inflexible rule and that courts may intervene where the alternative forum is ineffective, biased, or where the dispute raises issues of illegality and violation of constitutional or statutory rights.
13. In the present case, the Plaintiff alleges that the Registrar was directly involved in the impugned actions. To insist that the Plaintiff exhaust remedies before the very body accused of wrongdoing would offend the principle of *nemo iudex in causa sua* and undermine the right to a fair hearing under Articles 47 and 50 of the Constitution.

14. In light of the foregoing, it is evident that the Preliminary Objection does not raise a pure point of law capable of disposing of the suit at this stage. It is intertwined with contested facts and issues that can only be resolved upon hearing the substantive application and, if necessary, the suit on its merits.

15. For the reasons set out above, I find that the Notice of Preliminary Objection dated 6th March 2025 is devoid of merit. It is dismissed. The costs shall abide the outcome of the suit.

It is so ordered.

RULING delivered virtually, dated and signed at **NAIROBI**

This **29th** day of **January** 2026.

P.M. MULWA

JUDGE

In the presence of:

Ms. Kinyua for Plaintiff/Applicant

Mr. Kamau for 1st Defendant and 1st & 2nd Interested Parties

Court Assistant: *Carlos*