

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
JUDICIAL REVIEW DIVISION
JUDICIAL REVIEW APPLICATION NO E196 OF 2025

**MYCREDIT
LIMITED.....APPLICANT**

VERSUS

**MICRO AND SMALL
ENTERPRISES
RESPONDENT**

TRIBUNAL.....

AND

**AFRICAN HERBAL INGREDIENT
WHOLESALEERS LIMITED.....INTERESTED PARTY**

JUDGMENT

1. This judgment determines the applicant's Notice of Motion dated 5/7/2025 filed pursuant to leave of Court granted on 16/6/2025 in HC JR Miscellaneous application No. E064 of 2025.
2. The applicant seeks the following substantive orders:
 - a. ***THAT the Honourable Court be pleased to issue an ORDER OF PROHIBITION directed to the Respondent stopping and/or restraining it from continuing with any proceeding in Nairobi Micro and Small Enterprises Tribunal Claim No. E001 of 2025 African Herbal Ingredient Wholesalers Limited versus MyCredit Limited.***

b. THAT the Honourable Court be pleased to issue an ORDER FOR CERTIORARI to remove into this Honourable Court to quash the proceedings of the Respondent in Nairobi Micro and Small Enterprises Tribunal Claim No. E001 of 2025 African Herbal Ingridient Wholesalers Limited versus My Credit Limited including its orders but not limited to those of 27th May, 2025.

c. THAT the costs of the application be provided for.

3. The applicant's case is that the Interested Party filed a Notice of Motion application dated 26th May, 2025 under certificate of urgency before the Micro and Small Enterprises Tribunal. That on 27th May, 2025 the Honourable Chairperson considered the application and granted the orders sought therein in the interim pending the hearing and determination of the application.
4. The applicant being aggrieved by the orders issued on 27th May, 2025 filed an application dated 29th May, 2025 seeking to set aside the orders issued on 27th May, 2025.
5. The applicant contends that the Tribunal did not have jurisdiction to entertain the claim lodged by the interested party herein, as provided for under Sections 54(1) and 55 of the Micro and Small Enterprises Act for the reasons that the Ex parte Applicant is neither a member of the Micro and Small Enterprises Authority nor is it regulated by the Micro and Small Enterprises Act as it is not a micro or small enterprises defined under the

Act, since it has a turnover of over Kshs. 1,000,000/- and has hundreds of employees all over the country.

6. The applicant claims that it will be prejudiced if subjected to the proceedings before the Respondent which lacks authority to entertain the proceedings.
7. The applicant further asserts that the Respondent illegally abrogated itself the authority and jurisdiction to receive and hear the Claim and application filed by the Interested Party while ignoring clear provisions of section 55 of the Micro and Small Enterprises Act.
8. The applicant avers that the Respondent by assuming jurisdiction over the claim, it unlawfully and without jurisdiction acted contrary to the provisions of Article 159 and Article 169(1)(d) of the Constitution of Kenya and Section 55 of the Micro and Small Enterprises Act Cap 499C. It is asserted that the applicant's rights and interests would be jeopardized if the Tribunal is allowed to hear a claim which is outrightly outside the statutory scope and that it is in the interest of justice that the application is allowed and orders sought herein are granted.
9. The application is further supported by the Statutory Statement dated 10th June, 2025 annexed thereto and the Verifying Affidavit sworn by David Kage on 10th June, 2025 which all mirror the grounds reproduced above.
10. Only the Interested Party filed a response to the application in opposition. He filed Notice of preliminary objection dated 7th November, 2025 contending that the applicant's notice of motion dated 26th June, 2025 is bad in law,

incurable by amendment, an abuse of court process as inter alia, it offends the doctrine of Issue estoppel and the same should be struck out and expunged from records with costs.

11. That the applicant's notice of motion is bad in law, incurable by amendment, an abuse of court process as inter alia it offends the doctrine of public policy and the same should be struck out and expunged from court records with costs.
12. That this court lacks proper jurisdiction to entertain, hear and determine the ex parte applicant's notice of motion dated 26th June 2025.
13. The interested party also filed a replying affidavit sworn by the director of the interested party company with authorization signed by himself. In the depositions, the interested party repeats the preliminary objection grounds adding that the exhibit marked DK-01 in the Verifying Affidavit in Support of the Ex Parte Applicant's Notice of Motion dated 26th June 2025 is materially
14. defective as it states that the Share Capital is Ksh 200,000,000.00 yet Form CR12 annexed and dated 13th November, 2025 herein shows a Share Capital of Kshs 212,000,000.00 a difference of Kshs: 12,500,000.00 and hence the exhibit is unreliable evidence and should be struck out with costs.
15. it was deposed that the said Notice of Motion Application is a fruit of the Ruling issued by this Honorable Court on 16th June 2025 in **HCJRMISC.**

NO. E064 of 2025 whereby the Ex Parte Applicant herein had applied for leave to file this Suit ex parte.

16. That the Honorable Tribunal had issued Orders on 27th May 2025 and Order Numbers 5 and 7 restrained the Ex Parte Applicant herein from disposing off the suit vehicle registration number KCV 747R pending the hearing and determination of the suit in the Honorable tribunal.

17. That Order Number 6 of the Honorable Tribunal issued Orders on 27th May 2025 compelled the Ex Parte Applicant to release the suit vehicle registration number KCV 747R to the Interested Party herein.

18. That nowhere in the Ruling issued by this Honorable Court on 16th June 2025 in **HCJRMISC. NO. E064 of 2025** did this Honorable Court vacate the Orders issued by the Honorable Tribunal on 27th May 2025.

19. That to date the Ex Parte Applicant has defied Order Numbers 5, 6 and 7 that the Honorable Tribunal issued on 27th May 2025 and therefore the Ex Parte Applicant is in contempt of the Honorable Tribunal and therefore has no locus to be heard by this Honorable Court until it purges the above-stated contempt.

20. That the Ex Parte Applicant's Notice of Motion dated 26th June 2025 should be struck out to enable the Interested Party herein to institute formal contempt of court Application in the Tribunal against the Ex Parte Applicant herein.

21. That to add insult to injury, a while ago within the along Kiambu Road, the deponent bumped into a vehicle registration number was KDV 516B which totally resembled the suit vehicle registration number KCV 747R.
22. That out of curiosity, he did a status search with the National Transport and Safety Authority for the suit vehicle registration number KCV 747R but the system informed him that the registration number KCV 747R did not exist.
23. That he then did a search with the National Transport and Safety Authority for the status of motor vehicle registration number KDV 516B and was issued with The Details of Registered Ownership of Vehicle As At 2025-11-07 09:59:05 Reference No: Mcr-2e6tq9l38 and that to his utter shock, the Chassis Number JM6TC4WLAK0320897 indicated in the above-said Reference for vehicle KDV 516B matched the one indicated in the Registration Certificate (Log Book) Serial Number N7074233Y for the suit vehicle registration number KCV 747R.
24. That the search with the National Transport and Safety Authority indicated the Registered Owner of vehicle KDV 516B, Chassis Number M6TC4WLAK0320897 as Kennedy Mariga Ngunjiri.
25. That the Ex Parte Applicant has not only failed, refused, declined, neglected and ignored to release the suit vehicle to the deponent as Ordered by the Honorable Tribunal on 27 th May, 2025, but has disposed of the suit vehicle and changed the vehicle registration number to KDV 516B.

26. That he would file a formal Application for the said Kennedy Mariga Ngunjiri and the Ex Parte Applicants herein to produce at the same time to this Honorable Court the said vehicle registration number KDV 516B and the suit vehicle registration number KCV 747R to prove the above-stated fact.
27. That the Ex Parte Applicant participated in **Otieno v Mycredit Limited & another (Tribunal Case E004 of 2023) [2024] KEMSET 1348 (KLR)** where judgment of the Honorable tribunal was delivered on 12th September, 2024, yet it never rushed to this court to challenge jurisdiction nor filed an appeal.
28. The Notice of motion was heard by way of oral submissions on 16/12/2025 with Mr. Abidha submitting on behalf of the applicant while Mr. Muciri submitted on behalf of the interested party.
29. The submissions mirrored the pleadings and affidavits filed by the parties with Mr. Abidha reiterating that the Tribunal is devoid of jurisdiction to entertain the case as filed by the interested party against the applicant, in view of the provisions of section 55 of the Micro & Small Enterprises Act.
30. Counsel for the applicant argued that the jurisdiction of the Tribunal is limited to Micro or Small Enterprises. That Section 54(1) establishes the Tribunal, to deal with claims of Micro & Small Enterprises while Section 2 on Enterprises defines Small or Micro Enterprise.

- 31.It was submitted that the exparte applicant has a turnover of hundreds of millions, whose share capital is over Kshs, 200 million hence it cannot fit the definition of Micro & Small Enterprises.
- 32.Mr. Abidha submitted that the dispute against the applicant offends the law as confirmed by the CR12 of the applicant confirming that its share capital exceeds Kshs.200 million.
- 33.That the Act only concerns Micro & Small Enterprises, not the company of the magnitude of the applicant.
- 34.Further, that the Interested Party has not even shown that it is registered under the Act and that Section 60 provides for appeals to the High Court by members.
- 35.It was submitted that the applicant has no locus to appear before the Tribunal as the law excludes it from the Act. he relied on the case of **Owners of Motor Vessel Lilian S v Caltex Oil Kenya Limited** and the **S.K. Macharia** cases, arguing that the Tribunal cannot innovate jurisdiction that it does not have.
- 36.Opposing the application, Mr. Muciri on behalf of the interested party submitted relying on the preliminary objection and replying affidavit sworn by himself.
- 37.He argued that the applicant had not controverted anything that he had stated in the preliminary objection and the replying affidavit. that the applicant had come with unclean hands because it had participated in the Tribunal

proceedings before and had disobeyed orders of the Tribunal by selling the vehicle. Citing **Otieno vs My Credit Tribunal Case No. E004/2023**, he submitted that there was a judgment on 12/9/2024, which the applicant did not appeal. he relied on the doctrine of public policy, submitting that the Tribunal will be thrown into disarray if the court finds that it has no tribunal yet in that Otieno case, the applicant herein did not appeal against the judgment of the Tribunal.

38. he relied on **Mburu & 5 Others Civil Appeal No. E094 of 2025 KEHC 12576 KLR** Family 16/9/2025 on estoppel and argued that the circumstances are the same that the applicant did not appeal in the Otieno case so it is estopped from challenging jurisdiction of the tribunal in this case.

39. He submitted that there the applicant's financial statements were questionable because according to the interested party, the applicant's share capital is less by 12 million and that there is also a debenture.

40. He further challenged the applicant's counsel's locus in this matter on account that there was no Board resolution for Mr. Abidha to institute this suit contrary to Order 4 of the Civil Procedure Rules, 2010. He urged this Court to allow his replying affidavit and that this suit be dismissed so that the parties go back to the Tribunal to deal with contempt of court orders proceedings.

41. In rejoinder, Mr. Abidha submitted that there is consensus that the value of the applicant is in hundreds of million hence the Tribunal has no jurisdiction.

that there is no bigger public policy than adherence to the law and the Constitution which obedience does not offend public policy. On alleged Acquiescence or waiver of jurisdiction, it was submitted that jurisdiction cannot be conferred or be waived by parties as was held by the Supreme Court in the **S.K. Macharia v Kenya Commercial Bank Limited** Case, and that estoppel does not arise here.

42. On authorisation to file suit, it was submitted that the applicant has not contested the legal representation and hence no prejudice is demonstrated. He prayed for the orders sought with costs.

Analysis and determination

43. I have considered the application as presented, the opposition thereto and the respective parties' oral submissions. I find the main issue being whether the Respondent Tribunal has jurisdiction to determine the dispute in the nature as filed by the interested party herein.

44. The Micro and Small Enterprises Tribunal (the Tribunal) which is the Respondent herein is established under Section 54(1) of the Micro and Small Enterprises Act No. 55 of 2012. (The Act). The Tribunal functions as a subordinate court recognised under Article 169 of the Constitution.

45. The interpretation section 2 of the Act defines "***micro enterprise***" to mean ***a firm, trade, service, industry or a business activity—***

(a) whose annual turnover does not exceed five hundred thousand shillings;

(b) which employs less than ten people; and(c)whose total assets and financial investment shall be as determined by the Cabinet Secretary from time to time, and includes—

(i)the manufacturing sector, where the investment in plant and machinery or the registered capital of the enterprise does not exceed ten million shillings;

(ii)the service sector and farming enterprises where the investment in equipment or registered capital of the enterprise does not exceed five million shillings;

46.As stated in the ruling for leave to apply vide JR MISC E064 of 2025, Section 54(1) of the Micro and Small Enterprises Act provides for the establishment of the Tribunal to adjudicate disputes involving micro, small and medium enterprises ***registered*** under the Act.

47.It follows that the Tribunal cannot by craft determine disputes involving entities which are not registered under the Act either as small or micro enterprises.

48.Section 55 (1) of the Act provides for jurisdiction of the Tribunal as follows:

55. Jurisdiction of the Tribunal

(1) If any dispute concerning the micro and small enterprises arises—

(a) among members, past members and persons claiming through members, past members of associations and or administrators of estate of deceased members of the associations;

(b) between members, past members or administrators of estate of deceased members of the association, and the Authority, or any of their officers or members;

(c) between the Authority and an association, it shall be referred to the Tribunal for determination.

49. In the present case, the Applicant claims that it is not registered under the Act, nor that it is under any obligation to register, not being a micro or small enterprise as defined under the Act. The applicant claims that the Tribunal assumed jurisdiction to entertain a dispute against a party over whom it lacks jurisdiction.

50. Section 55(2) of the Act sets out disputes which the Tribunal is empowered to adjudicate upon and provides that:

(2) A dispute for the purpose of this Act shall include—

(a) commercial disputes involving micro and small enterprises;

(b) failure to comply with the terms and condition of allocation of worksites;

(c) election and management of associations;

(d) failure to comply with the constitution or rules of a micro and small enterprise association or umbrella organisation;

(e) unprocedural and illegal allocation, subdivision, subletting of a micro and small enterprise worksite;

(f) mismanagement and misappropriation of funds;

(g) any other dispute acceptable by the Tribunal.

51. The respondent did not respond to the application. However, the interested party contends that if this court finds that the Tribunal has no jurisdiction to entertain the dispute against the applicant, then it will be catastrophic for the Tribunal since it has in the past entertained such disputes yet there was no challenge or appeal on the ground of jurisdiction. Further, that the applicant having been a party to the past dispute and having acquiesced to jurisdiction of the Tribunal, is estopped from raising jurisdictional issues here and now, as that is against public policy.

52. In a rejoinder, the applicant asserts that estoppel does not operate against the law and that it cannot be against public policy where the Tribunal has no jurisdiction yet it has assumed jurisdiction.

53. I will first deal with the question of estoppel. Estoppel is an equitable doctrine, a bar that prevents one from asserting a claim or right that contradicts what one has said or done before, or what has been legally established as true. Estoppel may be used as a bar to the re-litigation of issues or as an affirmative defence.

54. In the realm of jurisprudence, the doctrine of estoppel stands as a pivotal mechanism designed to promote fairness and consistency in legal

proceedings. This doctrine, deeply rooted in both common law and equity, serves to bar individuals from contradicting their prior actions or statements when such contradiction would result in prejudice to another party who has relied on those actions or statements.

55. Estoppel fundamentally operates on the principle that a person should not be allowed to assert facts or rights that are contrary to what they have previously established by their own conduct or representation. Here are key aspects of this doctrine:

- i. Representation or Conduct: For estoppel to apply, there must be a clear representation or conduct by one party, leading another to believe in a particular state of affairs, whether through words, actions, or silence.*
- ii. Reliance: The doctrine necessitates that the party relying on the representation must have reasonably acted upon it to their detriment or altered their position based on that reliance.*
- iii. Injustice: The primary aim is to prevent injustice, ensuring that no party benefits from inconsistencies that could harm another who has acted in good faith.*

56. There are several types of estoppel recognized in legal systems:

- i. Promissory Estoppel: This arises when one party makes a promise or assurance to another, which, if broken, would cause detriment to the promisee who has relied on that promise.*

ii. Estoppel by Deed: Here, parties are bound by the facts stated in a deed, preventing them from later denying those facts.

iii. Estoppel by Record: Prevents re-litigation of issues already decided by a court of competent jurisdiction.

57. However, Estoppel cannot negate illegality and neither can it be invoked to override jurisdiction. This is because Courts and tribunals derive their jurisdiction and powers from Constitutions and statutes and they cannot be bound by private agreements or actions to exceed these foundational limits.

58. In **Henry Muthee Kathurima v Commissioner of Lands & another [2015] eKLR** the court stated: -

“It is our view that estoppel cannot be used as shield to protect unlawfully acquired property; estoppel cannot be used to circumvent Constitutional provisions and estoppel cannot override express statutory procedures; there can be no estoppel against a statute.”

59. In **Modern Holdings (EA) Limited v Kenya Ports Authority SC Petition No 20 of 2017 [2020] eKLR** the Supreme Court acknowledged and reiterated that the question of jurisdiction can be raised at any stage of the proceedings and observed that:

“57. In concluding on this issue, it is trite that the question of jurisdiction, can be raised at any stage of the proceedings...”

60. In **Petition No. 8 (E010) of 2021 between Dina Management Limited versus County Government of Mombasa and 5 others [2023] e KLR**, the

Supreme Court had this to say concerning jurisdiction and at what stage the question of jurisdiction can be raised in proceedings:

***“[60] We note that this question neither arose nor was it determined by the trial court. It is only at the Court of Appeal vide the Attorney General’s Cross Appeal that the court’s jurisdiction to hear and determine the matter was first questioned on this ground. Whether the dispute is intergovernmental in nature is a jurisdictional issue. Indeed, jurisdiction is a pertinent question for determination. A court is bound to always satisfy itself whether or not it has jurisdiction to hear and determine a matter before it. In Lemanken Aramat v Harun Meitamei Lempaka & 2 others [2014] eKLR we held that jurisdiction is a legal question and it can be raised at any time and by any party. The Nigerian Supreme Court in the case of Alhaji Bello Nasir v. Kano State Civil Service Commission & 2 others, SC. 144/2003 per Ogbuagu, JSC in his concurring judgement held as follows: “It is now firmly settled that issues of jurisdiction or competence of a court to entertain or deal with a matter before it, is very fundamental. It is a point of law and therefore, a rule of court, cannot dictate when and how, such Petition No. 8 (E010) of 2021 22 point of law can be raised. Being fundamental and threshold issue of jurisdiction, it can be raised at any stage of the proceedings in any court including this Court.”*”**

61. In other words, where a party raises the issue of jurisdiction of a court or tribunal, such issue must be determined and estoppel cannot override jurisdictional, constitutional or statutory provisions.

62. The interested party claims that the applicant was party to another dispute before the Tribunal and that it never raised any jurisdictional issue or challenge the decision by way of appeal or hence it is estopped from raising such issue in the subsequent dispute where it is even guilty of contempt of orders of the Tribunal by selling a motor vehicle contrary to the orders of the Tribunal.

63. The question is, can a party plead estoppel where there is no jurisdiction. It is trite law that Jurisdiction is not conferred by convenience, express or implied consent. It must be expressly conferred by statute, the Constitution or both. The jurisprudence on jurisdiction is well settled. In **Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd [1989] KLR 1**, Nyarangi J famously held that:

“Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings.”

64. The Supreme Court has repeatedly and variously held that a court’s jurisdiction emanates from either the Constitution or legislation or both, and as was stated in **Samuel Kamau Macharia vs. Kenya Commercial Bank Limited & 2 Others, Civil Application No. 2 of 2011** that:

“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 to itself jurisdiction exceeding that which is conferred upon it by Law.”

65. In the instant case, the Applicant claims that it is not registered and that neither is it registrable under the Act, as stipulated in section 5, not being a micro or small enterprise as defined under the Act. It was therefore upon the interested party and the respondent to controvert those facts with evidence of registration of the applicant under the Act. No such evidence was availed to this Court to counter the applicant’s assertions. Therefore, in the absence of evidence that the applicant is not subject to the jurisdiction of the Tribunal, it cannot be dragged to the Tribunal with disputes which would otherwise be determined by ordinary courts including small claims Court, depending on the pecuniary claim.

66. It is noteworthy that in the earlier dispute cited by the interested party, the judgment annexed never discussed the issue of jurisdiction. Instead, the judgment merely stated that the Tribunal had dismissed the grounds of opposition which had raised the issue of jurisdiction of the Tribunal. This Court therefore was not even enabled to read and appreciate the basis upon which the Tribunal determined that it had jurisdiction to determine that dispute and as stated above, estoppel cannot operate to defeat jurisdiction or statutory provisions.

67. Secondly, the applicant claimed that it is not a micro and small enterprise as defined under the Act. Thus, that not only is it not registered under the Act, but that it is not an entity that is subject to the Act. The applicant therefore challenges the jurisdiction of the Tribunal to hear and determine the dispute filed by the interested party.

68. On whether the Tribunal had jurisdiction in the matter, the long title to the Act provides:

An Act of Parliament to provide for the promotion, development and regulation of micro and small enterprises; to provide for the establishment of the Micro and Small Enterprises Authority, and for connected purposes.

69. The Act then defines an *enterprise* as:

"enterprise" means an undertaking or a business concern whether formal or informal engaged in production of goods or provision of services."

70. The Act further defines *micro enterprise* as above reproduced while a *small enterprise* is defined as:

"Small enterprise" means a firm, trade, service, industry or a business activity—

(a) whose annual turnover ranges between five hundred and five million shillings; and

(b) which employs between ten and fifty people; and

(c) whose total assets and financial investment shall be as determined by the Cabinet Secretary from time to time, and includes—

- i. the manufacturing sector, where the investment in plant and machinery as well as the registered capital of the enterprise is between ten million and fifty million shillings; and**
- ii. service and farming enterprises, where the equipment investment as well as registered capital of the enterprise is between five million and twenty million shillings.**

71. A reading of section 55 (1) of the Act reveals that for the Tribunal to have jurisdiction, the dispute must concern the small and micro enterprises. It follows that any dispute between or among other entities or persons who do not fit the definition of small and micro enterprises cannot be initiated before the Tribunal. Those disputes as is the case herein are purely contractual and any affected or aggrieved party to the contract has the right to file an ordinary civil or commercial suit for redress.

72. Section 5 all the way to section 10 of the Act provides for registration of an entity under the Act by the Registrar and considerations for registration, including deregistration. Registration under the Act must be by application and the Registrar has the power to decline registration or to deregister an entity under the Act.

73. In this case, neither the applicant nor the interested party have demonstrated that they are entities which are registered under the Act. Both parties are

simply described as limited liability companies registered under the Companies Act. Neither of the two parties filed into court certificates of registration in the prescribed form under the Act as could have been issued under section 7 of the Act.

74. The applicant filed its annual audited accounts dated 21/3/20205 showing that its total equities and liabilities (asset base) is Kshs 5,666,932236 and share capital of Kshs 200 million. the CR12 issued on 13th November 2025 shows that the nominal share capital is Kshs 212,500,000.

75. Although the interested party claims that the notice of motion is defective on account of this discrepancy, there is no material or apparent defect that would render the application defective as the CR 12 at the number and type of shares (value per share) shows” Ordinary 200,000,000 (Kshs 1.00 each) and preference 12,500,000(Kshs 1.00 each)” hence the explanation in the differences noted.

76. Nonetheless, the two figures are still far much more and in excess of what the Act contemplates, for an entity to be defined as a small and micro enterprise.

77. Additionally, from the statutory definitions of the small enterprises and micro enterprises, there is no evidence that the applicant herein falls within any of those definitions, even assuming that its CR12 had issues as stated by the interested party.

78. I reiterate that jurisdiction cannot be conferred by parties and neither can a tribunal or court of law arrogate itself of jurisdiction that it is devoid of. Where the Tribunal arrogates itself of jurisdiction, whether parties' consent to that jurisdiction or not, this Court's supervisory role is to check on excesses of bodies, tribunals, authorities or persons exercising judicial or quasi-judicial functions, as mandated by Article 165(6) and (7) of the Constitution.

79. In the end, I find and hold that whether there was another decision by the Tribunal between the same parties and which the applicant chose not to appeal is not a bar to the applicant challenging jurisdiction of the Tribunal in these subsequent proceedings.

80. I am satisfied on the material placed before me and upon reading the Act that the Tribunal was devoid of jurisdiction to entertain the dispute between the parties hereto.

81. On the question of lack of Board Resolution for the applicant to file these proceedings, it is important to note that these proceedings emanate from the Tribunal's proceedings where the interested party is the applicant while the applicant herein is the respondent. A respondent who is aggrieved by the decision of the decision of the Tribunal and elects to approach this Court cannot be told to go seek the Board Resolution before challenging those proceedings, especially where it is not demonstrated that their appearance

before the Tribunal was not challenged on account of want of a Board Resolution.

82. I agree that Board resolutions are important as stipulated in Order 4 of the Civil procedure Rules. However, each case must be determined on its merits.

83. In **Ansapar Beverages Limited v Development Bank of Kenya Ltd & 5 Others (HCCC No. 1155 of 2000)**, the court held that a company must authorize institution of any suit through a board or general meeting resolution. In **Spire Bank Limited v Land Registrar & 2 Others [2019] eKLR**, the Court of Appeal emphasized that the intention behind Order 4 Rule 1(4) of the Civil Procedure Rules is to ***prevent unauthorized litigation on behalf of the corporate entity.***

84. In the instant case, the deponent in the affidavits verifying and supporting the chamber summons and notice of motion are clear that the deponent, the debt recovery manager of the applicant was authorised by the Board of Directors to swear the affidavits and there is no contrary evidence from any Director of the Company challenging authority to institute these proceedings on behalf of the Company and for its own benefit and to protect its interests.

85. In **Mawe Mbili Limited v Equity Bank Kenya Limited & another (Civil Suit 70 of 2018) [2022] KEHC 150 (KLR) (Commercial and Tax) (17 February 2022) (Ruling)**, J.N.Mulwa J had this to say concerning lack of Board resolution to institute suit and I concur:

“The Plaintiff cited the decisions in Fubeco China Fushun v Naiposha Company Limited & 11 others [2014] eKLR; Bethany Vineyards Limited & Another v Equity Bank Limited & 2 Others [2020] eKLR, Dakianga Distributors Limited v Nicholas Buri Onkeo [2017] eKLR in support of the position that a board resolution authorizing the institution of a suit is not a mandatory requirement before filing a suit in the name of a corporation.

In the Verifying Affidavit that accompanied the Plaintiff’s Complaint filed herein on 16th February 2018, the deponent Jacqueline Ruth Damon stated inter alia that she is a director of the Plaintiff Company and that she instructed the firm of Messrs W.G Wambugu & Co. Advocates to institute the proceedings herein against the Defendants.

In Arthi Highway Developers Limited v West End Butchery Limited & 6 others [2015] eKLR, the Court of Appeal cited the case of United Assurance Co. Ltd v Attorney General: SCCA NO. 1 of 1998 where the Supreme Court of Uganda held that:

“...it was now settled, as the law, that, it does not require a board of directors, or even the general meeting of members, to sit and resolve to instruct Counsel to file proceedings on behalf and in the names of the Company. Any director, who is authorized to act on behalf of the company, unless the contrary is shown, has the powers of the board to act on behalf of that Company.”

In Fubeco China Fushun v Naiposha Company Limited & 11 others [2014] eKLR, Gikonyo J. while dealing with a case where a director's powers to authorize the filing of an application on behalf a company had been challenged, stated that:

“In the case before me, Caroline Wairimu Kimemia is a director of the Defendant Company and she duly authorized the Advocates on record to commence this Application. That fact is not denied and I am surprised the person laying the objection is the Plaintiff and not the Defendant Company. The Plaintiff has also not presented any material or affidavit from the other directors denying the authority of Caroline Wairimu Kimemia as a director in the Defendant Company. As such, I do not think the Court is in any position to dispute the authority of Caroline Wairimu Kimemia or the instructions to the advocate on record to defend the interest of the company. Therefore, in the absence of evidence to the contrary, I find the affidavits filed to be in order and the advocate herein to be properly on record for the Defendant.”

From the above authorities, I gather that a director is duly authorized to act in the interest of a company unless the contrary is shown. In the instance case, the 2nd Defendant has not tendered any evidence before the court to show that his co-director Jacqueline Ruth Damon, did not have the authority to act in any way on behalf of and in the interest of their company, the Plaintiff herein. Such evidence would have taken

the form of the Plaintiff's Articles of Association showing that directors do not have such authority or even a Board Resolution. In any case, the court is well aware that even where proceedings are started without proper authority, the same may subsequently be ratified.

The upshot therefore is that it was not mandatory that a board resolution under seal authorizing the institution of the suit be filed by the Plaintiff at the commencement of these proceedings. The absence of the same is therefore not a ground for striking out the Plaintiff's suit at this point.”

86. The above decision by my learned sister Judge is sound law and I have nothing useful to add.

87. In the end, I find the objections by the interested party on account of want of board resolution to be devoid of merit.

88. On whether judicial review orders sought should issue, in my view, the applicant has demonstrated that it has no alternative remedy, as it is not a person entitled to invoke the appellate process under Section 11 of the Act. Judicial review thus becomes the only available remedy.

89. In the end, I find merit in the application by the applicant which I hereby allow and make the following orders:

- a. An order of prohibition is hereby ordered prohibiting the respondent herein Micro and Small Enterprises Tribunal from continuing with any proceedings in Nairobi Micro and Small*

Enterprises Tribunal Case No. E001 of 2025 African Herbal Ingredient Wholesalers Limited versus MyCredit Limited.

- b. An order of certiorari is hereby issued removing into this court and quashing all the proceedings and orders issued by the respondent herein Micro and Small Enterprises Tribunal in Nairobi Micro and Small Enterprises Tribunal Case No. E001 of 2025 African Herbal Ingredient Wholesalers Limited versus MyCredit Limited.*
- c. I order that each party bear its own costs of the application as the main issue centered around jurisdiction and the main dispute is not yet resolved, with the interested party being at liberty to institute proceedings in court against the applicant for appropriate remedies.*

89. I so order

90. This file is closed

Dated, Signed and Delivered at Nairobi this 10th Day of February, 2026

**R.E. ABURILI
JUDGE**