

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**JUDICIAL REVIEW DIVISION**  
**JR. NO. E324 OF 2025**

**MOHAMED YUSSUF ABDI .....**  
**APPLICANT**

**VERSUS**

**KENYA REVENUE AUTHORITY .....**  
**RESPONDENT**

**AND**

**BUBA CO. LIMITED..... INTERESTED**  
**PARTY**

**JUDGMENT**

- 1.** On or about 14<sup>th</sup> October 2025, the Applicant received a demand notice from the Respondent in respect of tax arrears of **Kshs. 9,710,018.33** owing and due from the Interested Party Company.
- 2.** He made an attempt to get the Respondent to withdraw the same notice severally in the year 2022, 2023.
- 3.** It is his case that, 2 years had passed since lodging his request to be removed from the tax records of the Interested Party, he instructed counsel to officially demand for his removal and/or association with the tax affairs of the Interested Party.

4. He argues that his Advocates wrote to the Registrar of Companies on 9<sup>th</sup> December 2024 to officially ascertain whether he has ever been appointed as a director or shareholder of the Interested Party.
5. It is further his case that the Registrar of Companies, through its duly authorized officers, replied to his Advocate's letter via an email dated 18<sup>th</sup> December 2024 that he has never been a director and shareholder of the Interested Party Company since its incorporation.
6. The Applicant argues that he is not a director of the interested party. As such he's not liable to any demand sent by the Commissioner of Kenya Revenue Authority to the interested party
7. He argues that he sees being a director of the seed company as demonstrated in the CR 12.
8. He argues that he sent mail to the bureau that registers companies informing them that he was not a director.
9. It is the Applicant's case that the Respondent has acted illegally by refusing to remove the demand notice for the tax which does not know about.
10. In his further affidavit the Applicant argues that he has never been a director or shareholder of the Interested Party Company from its incorporation neither has he ever had any personal relationship and/or contact with the Interested Party Company.
11. This according to him can be seen from the Incorporation documents used at the time of the registration of the Interested Party Company.

- 12.** This can also be demonstrated in the CR 12 which confirms that he is not a current official of the Interested Party Company. He argues that he has never had any legal nexus with the said Buba Co. Ltd.
- 13.** It is further his case that if there are 2 conflicting pieces of information held at the Business Registration Service (BRS) and the Respondent's iTax system, then the information that is held at the BRS would be deemed to be the correct and accurate information.
- 14.** In essence, the information registered at the BRS must form the basis of the information captured on the Respondent's iTax system.
- 15.** The information it holds in its iTax system for Buba Co. Limited contradicts the information held by BRS in respect of the Interested Party.
- 16.** The email from the Registrar of Companies confirms that he has never held any directorship or shareholding position in the Interested Party.
- 17.** It is his case that the Respondent's iTax records regarding Buba Co. Ltd is false, inaccurate and does not mirror the information held by BRS.
- 18.** It is his case that he should not have received a demand notice from the Respondent.
- 19.** The Respondent's averments in its Replying Affidavit seeking to place the burden of updating the iTax portal on the Interested Party are misconceived and create an unjust situation.

- 20.** There has never been any change in the particulars of directorship and shareholding in the Interested Party Company.
- 21.** Being a stranger to the company he has no legal, administrative or practical ability to access its iTax profile or compel it to make any changes to its iTax portal.
- 22.** The Respondent's position forces him, an innocent third party, to be held liable for a significant tax debt of Kshs. 9,710,018.33 due to a data error while the Respondent's only "solution" is for him to perform an action, compel the Interested Party to act, that is legally and practically impossible for him.
- 23.** The Data Protection Act, 2019, provides a right to data subjects, including the Applicant, to have inaccurate personal data rectified.
- 24.** He argues that the request for the Respondent to correct its records to delink him from the Interested Party is an invocation of his right to rectification therefore the Respondent's refusal to correct data it knows to be false is a breach of its obligations as a data controller under the said Act.
- 25.** The Respondent's actions are the epitome of unfair administrative action under Article 47 of the Constitution and the Fair Administrative Action According to him.
- 26.** The orders sought are the only effective remedy to cure the injustice and illegality that is being perpetrated by the Respondent. It is his case that the Respondent's demand notice against him in respect of

Buba Co. Ltd is therefore irrational, procedurally improper and illegal for the above reasons.

**Applicant's Written Submissions;**

- 27.** The Applicant submits that the guiding provision of law in respect of administrative action is Article 47 of the Constitution which states as follows:

*“Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.”*

- 28.** It is the Applicant's submission that the Respondent's conduct is contrary to the provisions of Article 47 of the Constitution. The enforcement of a tax demand against an innocent third party is unlawful and unreasonable.
- 29.** The Applicant submits that it provided evidence proving that he has no connection whatsoever to the Interested Party Company including a CR12 (official search) which lists the directors and shareholders of the Interested Party Company.
- 30.** The Applicant also wrote to the Registrar of Companies who confirmed via email that the Applicant has never been a director and shareholder of the Interested Party Company since its incorporation.
- 31.** The Respondent refused failed to provide any written reasons and/or justifications as to why it could not process the removal of the Applicant's details from the Interested Party's iTax records.

- 32.** The Applicant submits that at all material times, the directorship information kept by the Registrar of Companies and the Respondent should tally and where there is a variance, the information held by the Registrar of Companies takes precedence.
- 33.** The Applicant submits that he has sworn an affidavit stating that he has never been a director or shareholder of the Interested Party, that its officials are strangers to him, and that he has never had any dealings with the company.
- 34.** This was not a mere assertion as it was backed by cogent documentary evidence.
- 35.** He provided Certified copies of the Particulars of Directors and Secretaries at incorporation and the Memorandum of Association of the Interested Party which confirm the identities of its founding directors and shareholders wherein his name was not listed as amongst the Interested Party's officials.
- 36.** The Applicant had no nexus with Buba Co. Limited as established hereinabove, the demand notice issued against him ought to be quashed.
- 37.** The Respondent's refusal to remove the Applicant from the Interested Party's iTax records falls under the purview of administrative action, which administrative action is subject to challenge by way of judicial review.
- 38.** The tax demand against the Applicant as well as the refusal to remove him from the iTax records of the Interested Party constitutes an

illegality, irrationality, procedural impropriety and a direct violation of the Applicant's constitutional rights under Article 47 of the Constitution.

- 39.** Reliance is placed in the case of **Associated Provincial Picture Houses Ltd v Wednesbury Corp [1948] 1 KB 223** Lord Greene MR defines unreasonableness as:

*“a decision that took into account irrelevant considerations or did not take into account relevant considerations; and where a discretionary decision was "so unreasonable that no reasonable authority could ever have come to it.”*

- 40.** The Applicant also seeks an order of Mandamus to compel the Respondent to perform its public duty of correcting its records.
- 41.** The Respondent, as a public body has a duty to act fairly, expeditiously and to maintain accurate records.
- 42.** The Respondent has been in possession of conclusive evidence (a CR12) and irrefutable confirmation from the Registrar of Companies. Its failure to perform the simple administrative task of removing him from the Interested Party's tax records is a dereliction of duty and a wanton violation of his right to fair administrative action as enshrined in Article 47 of the Constitution and the Fair Administrative Action Act.

### **Applicant's Supplementary Submissions;**

- 43.** It is the Applicant's respectful submission that the Respondent's defence as articulated in its Replying Affidavit is untenable in law,

fails to address the central illegality and amounts to a dereliction of its public duty.

44. The Respondent issued a tax demand for **Kshs. 9,710,018.33** to the Applicant.
45. It is based solely on an entry in the iTax portal which lists the Applicant as a director of the Interested Party.
46. The Applicant has provided the Respondent with conclusive evidence from the Business Registration Service (BRS) proving that the he is not and has never been, a director or shareholder of the Interested Party since its incorporation.
47. The Respondent has refused and/or neglected to correct its records.

**i. Whether the Respondent's continued reliance on its flawed iTax data is irrational and unreasonable.**

48. The Respondent's argument that the *"iTax system is a self-managed portal"* and it *"relies on the information supplied"*. Is without evidence to the contrary is irrational and unreasonable.
49. The Respondent is in possession of two conflicting sets of data whereby one is a secondary, unverified iTax record and the second is the primary, certified and statutory record from the Registrar of Companies.
50. The Respondent's decision to prefer its own flawed data over the official data from the BRS is a decision *"so unreasonable that no reasonable authority could ever have come to it"* as laid down in

***Associated Provincial Picture Houses Ltd v Wednesbury Corporation [1948] 1 KB 223.***

51. The certified BRS records are information available to the Commissioner and the Respondent's refusal to use this information is a failure to exercise its own statutory power and discretion to correct errors in its own system.
52. This offends **Article 47 of the Constitution** which states that everyone has the right to administrative action that is expeditious, effective, lawful, reasonable and fair in its process.
53. The Applicant submits that it is also a breach of **Section 4(1) of the Fair Administrative Action Act, 2015 which** demands that administrative action be "*expeditious, efficient, lawful, reasonable and procedurally fair.*" The Respondent's conduct has been demonstrably inefficient, has delayed for years and its refusal to correct a factual error is unreasonable.
54. The Respondent's action is also contrary to **Section 7(2)(k) of the Fair Administrative Action Act, 2015** which states that "*A court or tribunal may review an action or decision if the administrative action or decision is unreasonable*" because Respondent's refusal to act is unreasonable given the evidence before it.
55. Reliance is placed in the case of ***Republic v Kenya Revenue Authority Ex parte Yaya Towers Limited [2008] eKLR obiter dicta***, the High Court affirmed that KRA is bound to exercise its discretion reasonably and must not "fetter" itself. The Respondent has unreasonably fettered itself by claiming it can *only* look at its iTax

portal and nothing else, not even certified records from a government body.

56. The Respondent argues that **Section 9** of the **Tax Procedures Act, 2015** places the duty to update records on the taxpayer which ignores the fact that in this case that duty rests the Interested Party being the taxpayer not the Applicant.
57. Being a stranger to the Interested Party, the Applicant has no legal or administrative capacity to compel the Interested Party to amend its iTax records as the Respondent suggests.
58. The Applicant submits that The Respondent's "solution" that the Applicant must compel the Interested Party to act is legally and practically impossible. It creates an injustice by holding the Applicant hostage to the inaction of a third party while the Respondent itself is duty bound resolve the matter.
59. The Respondent has not adhered to Section 24(2) of the **Tax Procedures Act, 2015** which explicitly provides that the Commissioner "*is not bound by a tax return or information provided by or on behalf of a taxpayer*" and may use "*any information available to the Commissioner*" to make an assessment.
60. The Applicant submits that the Respondent's refusal to correct its iTax records so is a breach of Section 26(d) and (e) of the Data Protection Act, 2019 which provides for the Right to rectification by stating that a data subject has a right:

*“To correction of false or misleading data; and to deletion of false or misleading data about them.”*

61. The Applicant submits that the demand notice dated 22<sup>nd</sup> October 2021, as it pertains to the Applicant, is *void ab initio*.
62. It is predicated on a fundamental error of fact that the Applicant is a director which the Respondent knew or ought to have known was false. It is a product of irrationality and must be quashed.
63. Reliance is placed in the case of **Republic v Kenya National Examinations Council Exparte Gathenji & Others Civil Appeal No. 266 of 1996**.

#### **The Respondent’s Case;**

64. According to the Respondent, the Applicant Application is fairly defective. It is his case that the I-Tax is run automatically and the same as guided by the information that is furnished by Applicants.
65. It argues that the Applicant gave his information as well as a PIN when he set up the account
66. That that is the thing that was given for the interested party and that the Applicant is a director of this same company.
67. It argues that if the Applicant is agreed, he ought to trigger the eye system for the changes that he is seeking to effect to show that he is not the director.
68. The Respondent argues that it cannot change that information on its own. If that would offend their privacy act.

**69.** It believes that their Application lacks merit.

**The Respondent's written Submissions;**

**70.** It is the Respondent's submission that the impugned demand notice was addressed to Buba Co. Limited, whose self-managed i-Tax profile listed the Applicant as its sole director at the time.

**71.** It submits that under Section 9 of the Tax Procedure Act, every registered taxpayer is obligated to notify the Commissioner (Respondent) within 30 days of any change in its particulars including directorship- Failure to which the Commissioner is legally bound to act on the records as they stand.

**72.** It submits that the i-Tax platform operates as a self-managed system where all Taxpayer information is input and maintained by the taxpayers themselves.

**73.** It submits that consequently, the Commissioner has no authority to alter or amend a company's directorship details unless such changes are formally initiated and submitted by the taxpayer through the proper channels.

**74.** It submits that any unilateral amendment by the Commissioner would be contrary to the provisions of the Tax Procedures Act, 2015, and the Data Protection Act,

**75.** It submits that the Respondent's communication to the Applicant was administrative, lawful, and grounded on data the Taxpayer (Buba Co. Limited) or his agents supplied at the i-Tax portal.

76. The Taxpayer is under a duty to keep their tax profiles accurate and current.
77. The Respondent submits that if the Applicant's name was erroneously or inadvertently retained in the Taxpayers i-tax data, the lawful remedy is for Buba Co. Limited (taxpayer) to initiate a correction through the BRS and reflect the changes on i-Tax.
78. The Court's jurisdiction in Judicial Review is confined to examining illegality, irrationality, or procedural impropriety.
79. In **Republic V Kenya National Highways Authority Exparte: Adopt –A- Light Ltd [2013] eKLR**; the court found that the Respondent was acting within its powers and mandate and did not act unreasonably or violate the Applicant's legitimate expectation.
80. Under Section 5 of the Kenya Revenue Authority Act, the Authority is mandated to administer tax laws and systems and therefore the Respondent was acting within its powers and mandate as per the information details provided in its system by the Taxpayer.
81. The Applicant has not demonstrated that the Respondent's conduct fell within any of the grounds of illegality, irrationality and procedural impropriety.
82. It also places reliance in the case of **Pastoli vs Kabale District Local Government Council & Others (2008) 2 EA 300**, stated:
- “In order to succeed in an Application for Judicial Review, the Applicant has to show that the decision or act complained of is tainted with illegality, irrationality and procedural*

*impropriety: See also Council of Civil Service Union v Minister for the Civil Service [1985] AC 2; and Rahab Wanjiru Njuguna vs Inspector General of Police & Another, (2013) e ICLR.”*

- 83.** The Respondent while acting on the taxpayer's own registered information cannot be characterized as unfair or irrational.
- 84.** It is its submission that no law obliges the Respondent to delete a director's name from a taxpayer's profile without a duly filed amendment from the taxpayer.
- 85.** It is the Respondent's submission that Article 47 of the Constitution and Section 4 of the Fair Administrative Action Act guarantee every person fair administrative action that is lawful, reasonable, and procedurally fair.
- 86.** The Respondent's conduct met these standards: - to which the demand was issued pursuant to existing records, in good faith, and within lawful authority.
- 87.** According to the Respondent no evidence of malice, discrimination, or arbitrariness has been presented by the Applicant.

### **Analysis and determination;**

The issues for determination are;

- 1) Whether the Applicant has made out a case for the grant of the orders pray for.
- 2) Who shall be the cost of the Application.

**The first issue;**

**88.** Order 53(2) of the Civil procedure Rules provides:

*“Leave shall not be granted to apply for an order of certiorari to remove any judgment, order, decree, conviction or other proceeding for the purpose of its being quashed, unless the Application for leave is made not later than six months after the date of the proceeding or such shorter period as may be prescribed by any Act; and where the proceeding is subject to appeal and a time is limited by law for the bringing of the appeal, the judge may adjourn the Application for leave until the appeal is determined or the time for appealing has expired.”*

**89.** The above provisions prohibit the filing of judicial review Applications for certiorari after expiry of six months from the date of the impugned decision where such decision is a judgment, decree, conviction, order or other proceeding.

**90.** In **Republic v National Transport and Safety Authority & another [2016] eKLR**, G.V. Odunga J (as he then was) had this to say concerning the prayer for prohibition, where certiorari was not available to the Applicant:

*“As was held in Municipal Council of Mombasa vs. Republic & Umoja Consultants Ltd Civil Appeal No. 185 of 2001:*

*“Where a decision is made and its making has been made known to the Respondents who did not challenge the same*

*within 6 months of its being made by way of certiorari to have it moved into the High Court and be quashed, it is not open for them to seek to have the Appellant prohibited from implementing the decision as an order of prohibition would normally issue to stop or pre-empt a contemplated action where such contemplated action is either outside the jurisdiction of the decision-maker, or where the decision maker has evinced an intention to act contrary to law.”*

- 91.** The cause of action in this suit arose on 22<sup>nd</sup> October 2021, when the Applicant received a demand notice from the Respondent in respect of tax arrears of **Kshs. 9,710,018.33**.
- 92.** The Applicant cannot argue that he did not know of the existence of the dispute because after receiving the impugned notice, he engaged the Respondent severally on many fronts. He even engaged the Registrar of Companies and lawyers before filing this suit out of time.
- 93.** The time is out and Order 53 rule 2 cannot be enlarged.
- 94.** The Applicant has not made out a case for the grant of the leave orders as sought.

**Costs;**

- 95.** Cost shall follow the event in which case the Applicant shall be the cost.

**Determination:**

- 96.** The suit offends Order 53(2) of the Civil procedure Rules.

**Order:**

The Suit is hereby, struck out with costs.

**Dated, signed and delivered at Nairobi this 20<sup>th</sup> day of February, 2026.**

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**J. CHIGITI (SC)  
JUDGE**