

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MILIMANI
JUDICIAL REVIEW DIVISION
HCJR NO. E311 OF 2025

BETWEEN

REPUBLICAPPLICANT

VERSUS

REGISTRAR OF COMPANIES1ST RESPONDENT

DAVID KINISU SIFUNA2ND RESPONDENT

THE ATTORNEY GENERAL3RD RESPONDENT

**BEACH VILLAS LIMITEDEX PARTE
APPLICANT**

RULING

1. On or about 29th September 2025, the Ex Parte Applicant filed a Notice of Motion dated 29 September 2025 seeking, orders interalia. -

1) An order of Certiorari be issued to quash the Letter dated 29 April 2025 and/or any other subsequent reports, searches prepared by the 1st Respondent in so far as the same relates to the current ownership and directorship status of the Ex Parte Applicant.

2) Further and/or in the alternative an order of Mandamus be issued directed to the 1st Respondent compelling him or her;

a) to update the Exparte Applicant's company records to reflect the current ownership and directorship position of the Ex

Parte Applicant based on the Transfer of Share Forms forwarded on 08 August 2025.

b) to reinstate the names of Mwangemi Constance Wakesho, Luda Pelageya Mwangemi, Nina Dmirievna Mwangemi, director/shareholders and the Estate of the late Crispus Moses Nashon as shareholders of the Ex Parte Applicant; and

c) to issue an updated official search confirming compliance with orders 4(a) and 4(b) above within 14 days of this order.

2. In responding to the Application, the 2nd Respondent filed a Preliminary Objection on points of law in the following:

- 1) THAT the Application is incompetent, misconceived, bad in law, and an abuse of the due process of this Honourable Court.
- 2) THAT this Honourable Court lacks jurisdiction to hear and determine the Application as framed and filed.
- 3) THAT the Applicant lacks locus standi and/or legal capacity to institute, sustain, or prosecute the present proceedings.
- 4) THAT the Application is otherwise misconceived, unfounded, devoid of merit, and constitutes an abuse of the court process, and should therefore be struck out or dismissed with costs to the 2nd Respondent.
- 5) THAT the Application is incurably defective for being in contravention of Sections 66 and 67 of the Civil Procedure Act

to the extent that this Honorable court cannot sit in its own appeal.

- 6) THAT this Application offends Order 53 of the Civil Procedure Rules, which provides the exclusive procedure for instituting and prosecuting Judicial Review proceedings.

The 2nd Respondent's case;

Whether this Court has jurisdiction;

3. In **Owners of the Motor Vessel "Lillian S" —vs— Caltex Oil (Kenya) Ltd [1989] KLR 1**, the Court of Appeal held that "jurisdiction is everything; without it, a court has no power to make one more step. A court of law downs its tools the moment it holds the opinion that it is without jurisdiction."
4. He submits that the instant Application seeks to "remove" or nullify a letter dated 29th April 2025 issued in compliance with the orders made in HCJR No. E081 of 2025.
5. This Court according to him is therefore being invited to revisit, vary, or reverse an order of a court of concurrent jurisdiction—a course expressly barred under Sections 66 and 67 of the Civil Procedure Act, which confer appellate jurisdiction solely on the Court of Appeal.
6. In **Telkom Kenya Ltd v John Ochanda [2014] eCLR; Raila Odinga & 2 Others v IEBC & 3 Others [2013] eKLR**, the principle of finality of decisions and judicial hierarchy must be respected.

7. Article 23(3) (o) of the Constitution does not confer jurisdiction to review concluded judicial proceedings.
8. In **Republic –vs– Kenya Revenue Authority Ex Parte Yaya Towers Ltd [2008] eKLR**, the Court held that Judicial Review lies only to challenge public law decisions, not private or contractual matters.
9. In **Constitutional Petition No. 485 of 2019 – Nelson Muturi Ndumbeiya Harun v The Law Society of Kenya & 2 Others**, the petitioner sought to challenge his conviction by the Advocates Disciplinary Tribunal through a constitutional petition filed before the Constitutional and Human Rights Division, instead of invoking the appellate procedure expressly provided under Section 62 of the Advocates Act. In a ruling delivered on 17th March 2023, Thande J. held that her Court lacked jurisdiction to entertain the petition, noting that Parliament had established a specific statutory appeal mechanism for such grievances. The learned Judge accordingly upheld the Preliminary Objection dated 9th March 2020 and dismissed the petition dated 29th November 2019. The 2nd Respondent emphasizes this authority as a clear affirmation that where the law provides an alternative forum or procedure, a party cannot bypass it under the guise of constitutional or Judicial Review proceedings.
10. On the issue of whether this Court is functus officio, he submits that once a court renders a final determination on a matter, it becomes functus officio and cannot reopen or alter its decision except as

provided under Section 80 of the Civil Procedure Act and Order 45 of the Civil Procedure Rules.

- 11.** In HCJR No. E081 of 2025, this Honourable Court (per Abuliri J.) on 6th May 2025 expressly found that the Registrar of Companies had complied with its earlier orders by furnishing the report dated 29th April 2025, and consequently marked the matter as settled and closed.
- 12.** It further submits that the filing of the present proceedings—seeking to expunge the same letter and reopen issues already determined—violates the doctrine of *functus officio* and the principle of finality.
- 13.** Any aggrieved party's recourse lies in appeal or review, not by initiating a fresh Judicial Review cause.
- 14.** Reliance is placed in the Court of Appeal in *Nguruman Ltd v Shompole Group Ranch & Another* [2014] eKLR reaffirmed that once a court has pronounced itself, it cannot revisit the matter except through recognized procedures.
- 15.** On the issue whether the Ex Parte Applicant has locus standi or legal capacity, the 2nd Respondent submits that the individuals purporting to act for Beach Villas Limited have not demonstrated authority to institute these proceedings on the company's behalf.
- 16.** Company law dictates that a corporation, being a separate legal person, can only act through resolutions of its directors or shareholders.

17. Reliance is placed in the case of **Bugerere Coffee Growers Ltd v Sebaduka & another [1970] EA 147**, where the Court held that when companies authorize legal proceedings, resolutions must be passed at a board or general meeting and recorded in the minutes. No individual officer may commence proceedings without such authority.
18. Reliance is further placed in *Affordable Homes Africa Ltd v Ian Henderson & 2 Others* [2004] 1 eKLR, where the High Court held that failure to exhibit such corporate authorization renders a suit incompetent.
19. It is his case that the alleged deponents behind this Application—Mwangemi Constance Wakesho, Luda Pelageya Mwangemi, and Nina Mwangemi—are neither listed shareholders nor directors of the Applicant company as per the official records furnished to the Court in HCJR No. E081 of 2025. Accordingly, they lack locus standi to act or litigate in the company's name.
20. Reliance is placed in the case of *Macfoy v United Africa Co. Ltd* [1961] 3 All ER 1169, if an act is void, it is incurably bad, and nothing can put it right. These proceedings, founded on lack of authority, are null and void ab initio.
21. He submits that Judicial Review under the Fair Administrative Action Act (FAAA) applies only to administrative decisions. The Registrar of Companies merely complied with a court order and did not make any independent decision capable of review under Section 7 of the Act.

- 22.** He submits that the Act complained of does not constitute an administrative action within the meaning of Article 47 of the Constitution and Section 2 of the Fair Administrative Action Act, 2015.
- 23.** Administrative action refers to a decision or omission made by a public authority in the exercise of executive or statutory powers that affects a person's legal rights.
- 24.** In contrast, a judicial action involves the adjudication of disputes by a court or judicial officer.
- 25.** In the present case, the 1st Respondent merely complied with a judicial directive issued by this Honourable Court in HCJR No. E081 of 2025 by furnishing a report to the Court.
- 26.** Such compliance is a judicial act, according to him is not an administrative one, and therefore falls outside the scope of Judicial Review under the Fair Administrative Action Act.
- 27.** The term administrative proceedings refers to a structured process in which a public authority or administrative body receives representations from affected parties, evaluates evidence or submissions, and ultimately renders a determination or decision capable of altering legal rights or obligations.
- 28.** Such proceedings embody the elements of notice, hearing, and determination, consistent with the principles of fair administrative action under Article 47 of the Constitution.

29. He submits that in the instant case, there were no administrative proceedings conducted by the 1st Respondent – no notice was issued, no hearing was convened, and no decision was made.
30. It is his case that the 1st Respondent merely transmitted a factual report to this Honourable Court in obedience to a judicial directive and this act did not entail the exercise of administrative discretion or adjudicative authority, and therefore cannot be deemed to constitute an administrative proceeding capable of being challenged through Judicial Review.
31. He submits that the Applicant has not identified any administrative act, omission, or decision the, was ultra vires, irrational, or procedurally unfair.
32. He submits that in any event Section 9(2) of the Act requires exhaustion of internal appeal or review mechanisms before seeking judicial intervention.
33. The Applicant has not demonstrated exhaustion of remedies under the Companies Act, 2015, particularly Section 862, which allows aggrieved persons to apply to the Registrar for rectification before approaching the Court.
34. Reliance is made in the case of **Speaker of the National Assembly v Karume [19921 KLR 21; Republic v NEMA ex parte Sound Equipment Ltd [2011] eKLR)**.
35. On another front in answering whether the Application offends Order 53 of the Civil Procedure Rules and Sections 66 and 68 of the Civil

Procedure Act it submits that Judicial Review proceedings are a special jurisdiction governed exclusively by Order 53 of the Civil Procedure Rules and Sections 8 and 9 of the Law Reform Act.

36. It is his submission that the present Application improperly invokes Article 23(3) instead of adhering to the mandatory procedure under Order 53—namely, seeking leave, filing within six months, and naming the Republic as the Applicant.
37. Reliance is placed in the case of Republic —vs— County Council of Kwale & Another Ex Parte Kondo & 57 Others 1981 eKLR, the Court held that Order 53 provides an exclusive and special procedure that must be strictly complied with, failure to which the Application is a nullity.
38. The Application also seeks to impeach a concluded judicial order of this Court, thereby offending Sections 66 and 68 of the Civil Procedure Act, which bars the High Court from sitting in appeal over its own decisions. Only the Court of Appeal has such jurisdiction.
39. Under Sections 862 and 866 of the Companies Act, 2015, any person aggrieved by entries or omissions in the Register must first apply to the Registrar for rectification, and only upon refusal may they approach the Court.
40. It is his case that the Application offends the doctrine of exhaustion of administrative remedies as affirmed in **Geoffrey Muthinja & Another v Samuel Henry Mukunya & 1756 others [2015]**

eKLR and Mutanga Tea & Coffee co. Ltd v Shikara Ltd & Another [2015] eKLR.

- 41.** In **Republic —vs— Judicial Service Commission & another Ex Parte Pareno [2004] eKLR**, the Court emphasized that Judicial Review cannot be used as an appeal or to re-litigate matters already determined.
- 42.** In **Republic —vs— Kenya National Examinations Council Ex Parte Gathenji [1997] eKLR**, the Court held that Judicial Review is concerned with the legality of the process, not the merits of the decision.
- 43.** In **Patel v Mirah Builders Ltd [2001] KLR 578**, the Court of Appeal held that no court can enforce an illegal act or lend its aid to a party who founds a claim upon illegality.
- 44.** He submits that in the present case, the impugned company remains grossly non-compliant with the statutory requirements of the Companies Act, 2015.
- 45.** He further submits that the individuals purporting to act on its behalf are not the duly registered directors or shareholders as reflected in the official records of the Registrar of Companies. Consequently, they lack the legal capacity to institute or sustain these proceedings in the company's name.
- 46.** Moreover, the Application dated 29th September 2025 is statutorily time-barred under Rule 6 of the Fair Administrative Action (Judicial Review Procedure) Rules, 2021, which mandates that Judicial Review

proceedings must be commenced within six (6) weeks from the date of the impugned administrative action.

47. The documents relied upon by the Applicant are dated 30th August 2011, and there is no evidence on record that such documents were ever formally lodged with, or acted upon by, the 1st Respondent.
48. The lapse of more than fourteen years renders the present proceedings inordinately delayed, stale, and incompetent in law.
49. In his the Supplementary Submissions it is his case he advances the argument that around the inapplicability of Certiorari and Mandamus in the Present Case. The Applicant's Notice of Motion is misconceived and incompetent. The 1st Respondent acted in lawful obedience to a court order issued in HCJR E081 of 2025. Under settled principles of Judicial Review, certiorari cannot issue to quash an act performed in execution of a judicial command, and mandamus cannot issue to undo what has been lawfully done.
50. In **Republic v Kenya National Examinations Council Ex Parte Gathenji & Others [1997] eKLR**, the Court held that certiorari lies only to quash decisions made without jurisdiction or in breach of natural justice. Likewise, in **Republic v Judicial Service Commission & Another Ex Parte Pareno [2004] eKLR**, it was held that mandamus compels the performance of a duty unlawfully refused, but cannot reverse a lawful act.

51. It is his submission that, since the Registrar merely complied with a judicial directive, the acts complained of are insulated from Judicial Review.
52. The Applicant's attempt to use these prerogative orders to attack a lawful court process is therefore incompetent, frivolous, and an abuse of this Honourable Court's process.
53. Once the Court directed the Registrar to issue the CR12, that act ceased to be administrative; it became a judicial act. This Court, sitting as a Judicial Review court, lacks jurisdiction to revisit or quash it.
54. In **Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] KLR 1**, Nyarangi J.A. held that jurisdiction is everything and that a court must down its tools once it is found to lack jurisdiction.
55. Similarly, in *Republic v Judicial Service Commission & Another Ex Parte Pareno [2004] eKLR*, the Court held that Judicial Review is not a substitute for appeal or review of decisions by a competent court.
56. The present Application therefore offends Sections 66 and 67 of the Civil Procedure Act and Order 53 Rule 2, which prohibit the High Court from reviewing or sitting on appeal over its own decisions.
57. The reliefs sought relate to ownership, shareholding, and management of a private limited company. These are private proprietary rights, not public law issues, and are protected under both the Companies Act, 2015 and Article 40(1) of the Constitution.

58. Section 96(1) of the Companies Act, 2015 provides:

"The shares or other interest of any member in a company shall be personal property."

59. This provision categorically establishes that shares are private property, protected under the constitutional right to property.

60. The Companies Act further safeguards such private interests through. Section 323: Prohibiting alteration of the register of members except as permitted by law, Section 500: Criminalizing false or misleading entries and Section 501 Penalizing unauthorized alteration, destruction, or concealment of company documents.

61. The Registrar's duty under these provisions is purely administrative and documentary and she cannot confer or transfer ownership, nor hand over company records to non-members or persons not registered as directors.

62. In **Republic v Registrar of Companies & Another Ex Parte Githungo & 3 Others [2018] eKLR**, the Court held that:

"The Registrar's duty is administrative – to record filings made by duly authorized officers of a company. Ownership and shareholding disputes are private law matters not amenable to Judicial Review."

63. In **Republic v Registrar of Companies Ex Parte Karume Holdings Ltd [2019] eKLR**, the Court reaffirmed that Judicial

Review cannot be invoked to determine or transfer ownership of private companies.

64. In essence, the Applicant is inviting this Honourable Court to disregard both the procedural and substantive provisions of the Companies Act, 2015 by seeking orders that would effectively confer corporate rights and privileges upon individuals who have no legal nexus to the company — whether as registered shareholders, directors, or duly authorized officers.
65. Such a course would amount to an unlawful usurpation of the rights of the legitimate members and a direct affront to the statutory framework governing corporate ownership and management.
66. Section 96(1) of the Companies Act, 2015 expressly provides that the shares or other interests of a member in a company constitute personal property, while Section 323 prohibits any alteration of the register of members except in accordance with the law. It therefore follows that company rights cannot, by judicial fiat or administrative direction, be transferred to persons who are strangers to the company's register for as to do so constitutes an unlawful intrusion into private proprietary rights contrary to Section 96, Sections 323, 500, and 501 of the Companies Act and Article 40 of the Constitution.

The Ex Parte Applicant's Submissions;

67. The Ex Parte Applicant opposes the Preliminary Objection in its entirety and prays that it be dismissed with costs. According to the Applicant, the Preliminary Objection does not meet the threshold for

a valid preliminary objection, as it does not raise pure points of law, assumes disputed facts, and as such requires the ascertainment of evidence from the substantive Application.

68. The instant Judicial Review proceedings do not constitute an appeal against any prior court decision according to the Applicant.
69. Reliance is placed in the following cases, **Mukisa Biscuit Manufacturers Company Limited v West End Distributors Limited [1969] EA 696**, where the Court of Appeal for East Africa held that:

“A preliminary objection consists of a point of law which has been pleaded, or which arises by c/ear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration... a preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side is correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.”

70. In the recent decision of **Kangethe v Kiarie (Civil Appeal E006 of 2024) [2025] KEHC2381 (KLR) (6 March 2025) (Ruling)** the Court (J N Njagi, J.) referred to the often cited case of Mukisa

Biscuit Manufacturers Company Limited vs West End Distributors Limited [7969] EA 696 and held as follows: -

“...For a preliminary objection to succeed the following tests ought to be satisfied: Firstly, it should raise a pure point of law; secondly, it is argued on the assumption that all the facts pleaded by the other side are correct; and finally, it cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.”

71. In **Kwale International Sugar Company Limited v Epc Builders Limited & 2 others (Civil Appeal 208 of 2020) [2025] KECA 227 (KLR)**, the Court of Appeal reiterated that it is best for matters to be heard on the merits and in doing so, reiterated the caution by Madan, JA. in the context of an Application to strike out pleadings in the case of **D. T. Dobie & Company (Kenya) Limited vs Joseph Mbaria Muchina & Another [1980] eKLR** to wit:

The court ought to act very cautiously and carefully and consider all facts of the case without embarking upon a trial thereof, before dismissing a case for not disclosing a reasonable cause of action or being otherwise an abuse of the process of the court. At this stage the court ought not to deal with an_v merits of the case for that is a function solely reserved for the judge at the trial as the court itself is not usually fully informed so as to deal with the merits "without discovery, without oral evidence tested cross-examination in the ordinary way". (Sellers, L.J. (supra)). As far

as possible, indeed not at all, there should be no opinions expressed upon the Application which may prejudice the fair trial of the action or make it uncomfortable or restrict the freedom of the trial judge in disposing of the case in the way he thinks it right..."

72. In D. T. Dobie & Company (Kenya) Limited v Joseph Mbaria Muchina (supra)), the Court of Appeal held that:

"If an action is explainable as a likely happening which is not plainly and obviously impossible the court ought not to overact by considering itself in a bind summarily to dismiss the action. A court of justice should aim at sustaining a suit rather than terminating it by summary dismissal Normal lawsuit is for pursuing it.

No suit ought to be summarily dismissed unless it appears so hopeless that it plainly and obviously discloses no reasonable cause of action and is so weak as to be beyond redemption"

73. Mumo Matemu v Trusted Society of Human Rights Alliance [2013] eKLR, held that locus standi in constitutional and Judicial Review matters is interpreted liberally to promote access to justice, and cannot be resolved summarily without evidence. In doing so, the court quoted the Supreme Court of India thus:

"The time is now propitious at this stage of our constitutional development where we can state as was stated by the Supreme

Court of India in the case of S.P. Gupta v President of India & Others AIR [7982] SC 749 that:

This broadening of the rule of locus standi has been largely responsible for the development of public law, because it is only the availability of judicial remedy for enforcement which invests law with meaning and purpose or else the law would remain merely a paper parchment, a teasing illusion and a promise of unreality. It is only by liberalizing the rule of locus standi that it is possible to effectively police the corridors of powers and prevent violations of law. "

- 74.** In **Kenya National Examination Council v Republic Ex Parte Geoffrey Gathenji Njoroge 9 others 1997KECA58(KLR)** the Court of Appeal, regarding the order of mandamus quoted Halsbury's Law of England, 4th Edition Volume 1 at page 111 from paragraph 89 to 90 thus:

"The order must command no more than the party against whom the Application is made is legally bound to perform where a general duty is imposed, a mandamus cannot require it to be done at once. Where a statute, which imposes a duty leaves discretion as to the mode of performing the duty in the hands of the party on whom the obligation is /aid, a mandamus cannot command the duty in question to be carried out in a specific way."

- 75.** The Applicant submits that the Preliminary Objection is not a proper preliminary objection because it calls for ascertainment of facts

and/or the exercise of judicial discretion, that is the determination of whether this court lacks jurisdiction to hear and determine the Ex Parte's Application calls for ascertainment of what was the cause of action in HC/JR no. Eo81 of 2025, whether it is similar to the cause of action in these proceedings, if so did the orders issued in HC/JR no. Eo81 of 2025 determine the issues raised in these proceedings and is the Ex Parte's Application seeking to challenge those Orders.

- 76.** This will involve a factual inquiry on whether the 2nd Respondent in JR, HCJR Eo81/2025, merely sought to be furnished with information on ownership of the Ex parte Applicant and whether the court ordered the Registrar to furnish the 2nd Respondent with a report on the company's current status, so as to determine the cause of action.
- 77.** Similarly in the current Application the court will have to delve into the substantive facts, for instance the court will have to scrutinize the manner in which the Registrar executed his administrative duty, to determine whether there were procedural impropriety and unfairness, so as to determine the cause of action.
- 78.** It also calls for the ascertainment of whether the rights of the Ex Applicant were affected by the decision of the 1st Respondent who is a public body, contained in the Impugned Letter of 29 April 2025 so as to warrant the invocation of this court's jurisdiction.
- 79.** The court will have to consider the factual evidence to determine what rights of the Ex Parte Applicant's directors were infringed a result of

the decisions and actions of the 1st Respondent and to what extent were the actions of the registrar ultra vires.

- 80.** The Applicant further submits that the determination of whether the Ex Parte Applicant's directors lack locus standi to institute and prosecute these proceedings calls for the ascertainment of the fact whether the Ex Parte Applicant is an aggrieved person who is affected by the administrative decision or action of a public body.
- 81.** This involves factual inquiry into the Ex Parte Applicant's claimed directorship and/or shareholding in the company, the circumstances of the report's issuance, and the alleged procedural unfairness by the Registrar of Companies.
- 82.** The Applicant further argues that this is not a preliminary Objection on a point of law because the determination of whether the Application offends Order 53 of the Civil Procedure Rules the court will have to ascertain whether the Applicant sought and was granted leave to file these Judicial Review proceedings as required under the aforesaid order, thus requiring factual verification of the Application's form and substance.
- 83.** The Applicant further argues that the determination of whether the Application is incompetent, whether it is bad in law, whether it lacks merit and whether it is an abuse of the court process. This will require the court to delve into the substantive facts and merits of the Ex Parte Applicant¹'s Judicial Review Application, which is impermissible at the preliminary stage.

- 84.** It is the Applicants case that guided by the locus classicus case of Mukisa Biscuit Manufactures Company Limited vs West End Distributors Limited [1969] EA 696 which defined the nature of a PO, it is evident that Grounds 1.2.1, 1.2.3, 1.2.4, and 1.2.6 do not qualify as pure points of law.
- 85.** Determining the issues raised in these grounds necessitates an examination of factual evidence presented in the Ex Parte Applicant in the verifying affidavit, supporting documents (such as the Transfer of Share Forms and evidence of administrative hiccups by the Registrar), and the substantive merits of the Judicial Review Application.
- 86.** Reliance is also placed in the case of Kangethe v Kiarie (supra), in arguing that the Preliminary Objection is therefore not a proper preliminary objection, does not raise pure issues of law, calls for ascertainment of facts as well as exercise of judicial discretion and the same should therefore be dismissed in limine.
- 87.** Grounds 1.2.2 and 1.2.5 of the PO allege lack of jurisdiction and contravention of Sections 66 and 67 of the Civil Procedure Act, suggesting that the court is sitting in its own appeal. These grounds are fundamentally misconceived.
- 88.** The Applicant submits that the instant JR Application does not seek to appeal or review any prior court decision; rather, it challenges the administrative action of the Registrar of Companies in issuing the impugned Letter dated 29 April 2025 without involving the Ex Parte

Applicant, despite there being inconsistencies in the Ex Parte Applicant's register, resulting in inaccuracies.

- 89.** It relies on Sections 496 and 497 of the Companies Act, 2015 govern share transfers, mandating registration upon delivery of proper instruments, with the Registrar obligated to reflect such changes accurately in official searches.
- 90.** It is the Applicant's case that had the Registrar involved the Ex Parte Applicant in the process of coming up with the Report, or even, heeded the Ex Parte Applicant's advocates' letter dated 08 August 2025 sent to the Registrar prior to the filing of these judicial proceedings, and requesting him to update the Ex Parte Applicant's company records to reflect the current ownership and directorship position of the Ex Parte Applicant as confirmed by the previous Assistant Registrar of Companies in a letter dated 25 October 2011, then there would be no reason to file the instant JR Application.
- 91.** The Applicant submits that the previous Judicial Review, HCJR E081/2025, filed by the 2nd Respondent merely ordered the Company Registrar, 1st Respondent to furnish the 2nd Respondent with a report on the company's current ownership status and did not enjoin the Ex Parte Applicant as a party.
- 92.** It submits that the current Judicial Review Application scrutinizes the manner in which the Registrar executed that duty, alleging procedural impropriety and unfairness under the Fair Administrative Action Act, 2015.

- 93.** This is a distinct cause of action, not an appeal against the prior court order the Applicant submits.
- 94.** Reliance is placed in the case of Kenya National Examination Council (supra), we submit that indeed, where the court in HCJR E081/2025 ordered the Registrar to avail a Report on the Ex Parte Applicant's ownership, it could not dictate how the Registrar would go about it and the duty of the court ended there.
- 95.** The Applicant submits that once the Court ordered the 1st Respondent to issue the Report and/or the CR12, that was the end of it's mandate, and it was now up to the Registrar to follow the procedure laid down by statute namely the Companies Act, 2015 in performing his administrative duty of coming up with the said Report and/or any subsequent documents and CRI 2.
- 96.** It submits that the instant JR Application only opposes that administrative action by the Registrar (that the court had no input on how it would be carried out), and not the orders of the court in HCJR E081/2025.
- 97.** The 1st Respondent in the impugned letter dated 29 April 2025 purported to remove the names of the Ex Parte Applicant's current directors and shareholders that is Constance Mwangemi, Luda Mwangemi and Nina Mwangemi.
- 98.** It submits that the decision that adversely affects the rights of the Ex Parte Applicant's directors under Article 40 of the Constitution of

Kenya and the right to Fair Administrative Action Act under Article 47 of the Constitution of Kenya.

- 99.** The Applicant submits that shares are movable property and by the aforesaid names of the Ex Parte Applicant's current directors and shareholders, the 1st Respondent infringed the directors' right to own shares.
- 100.** The Applicant submits that the 1st Respondent's actions of removing and/or excluding the names Nina Mwangemi (the late mother), Constance Mwangemi, Luda Mwangemi and Nina Mwangemi.
- 101.** The Company Registrar, acted ultra vires because he acted outside his mandate under Sections 860 and 861 of the Companies Act and that he failed to accord the aforementioned persons a right to be heard before removing them as shareholders and directors contrary to the principles of natural justice thereby infringing their rights under Article 47 of the Constitution of Kenya.
- 102.** Under Article 165(6) of the Constitution, the High Court has supervisory jurisdiction over subordinate bodies, including the Registrar of Companies, to ensure compliance with fair administrative action principles.
- 103.** This Court according to the Applicant therefore has jurisdiction to hear the Ex Parte Applicant's Application challenging the 1st Respondent's administrative action and should not be derailed by the 2nd Respondent's ploy to delay the proceedings before this honourable court.

Analysis and determination;

104. The case in point on this proposition is the oft-cited **Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd [1969) EA 696 at page 700 paragraphs D-F Law JA**, as he then was, had this to say on what a preliminary objection entails:

“A Preliminary Objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the Jurisdiction of the court or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”

At page 701 paragraph B-C Sir Charles Newbold, P. stated:

“A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is usually on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion...” (Emphasis added).

105. The Preliminary Objection sits around legal principles and concepts of locus standi, functus officio and the jurisdiction of the court.

106. The court is satisfied, the points raised in the Notice of Preliminary are clear points of law.

- 107.** Whether or not there same will succeed, depends on the determination that flow from the analysis lacks locus standi.
- 108.** The Applicant in this suit is a limited liability Company. In the main, the applicant seeks the relief an order of certiorari be issued to quash the Letter dated 29 April 2025. The letter is the bedrock of the cause of action. The letter lists out who the directors of the Applicant are.
- 109.** In the Verifying Affidavit Constance Mwangemi Wakesho swore on Oath that she is a co-director and shareholder of the Applicant and that she is authorized by the Applicant.
- 110.** In the Affidavit, she submitted that the 1st Respondent in the impugned letter dated 29 April 2025 removed the names of the Ex Parte Applicant's current directors and shareholders that is Constance Mwangemi, Luda Mwangemi and Nina Mwangemi.
- 111.** The names Nina Mwangemi, Constance Mwangemi, Luda Mwangemi and Nina Mwangemi do not appear as directors of the Applicant.
- 112.** This court cannot carry out an inquiry past that. No board resolution to sue can be arrived at by a company that has no directors.
- 113.** The Applicant lacks locus standi and/or legal capacity to institute, sustain, or prosecute the Application and I so hold.
- 114.** The Black's Law Dictionary, 9th Edition at page 1026 defines locus standi as "the right to bring an action or to be heard in a given forum ". Therefore, it is the right to institute a cause of action because of a vested interest. It not only signifies a right to be heard, but also a

person must have sufficient interest to sustain his standing to sue in Court of Law. Locus standi therefore means a right to appear in Court and conversely to say that a person has no locus standi means that he has no right to appear or be heard in such and such proceedings.

115. Once the Court determines that the Applicant does not have the legal capacity to sustain the suit, then the court cannot determine the merits of the case.

116. In **Daykio Plantations Limited v National Bank of Kenya Limited & 2 Others [2019] eKLR** where the Court discussed locus standi as follows:

"It is therefore evident that locus standi is the right to appear and be heard in Court or other proceedings and literally, it means 'a place of standing'. Therefore, if a party is found to have no locus standi, then it means he/she cannot be heard even on whether or not he has a case worth listening to."

117. In the case of **Civil Case No. 13 of 2001; Khelef Khalifa El-Busaidy v Commissioner of Lands & 2 Others [2002] eKLR** the High Court while canvassing the issue of locus standi stated thus:

"...for an individual to have a locus standi, he must have an interest either vested or contingent in the subject matter before the court, which interest must be a legal one. Such interest must be above that of other members of the public in general. "

118. The Supreme Court of Kenya in **Macharia & another v Director of Public Prosecutions & others (Petition 9 (E011) of 2022)**

[2022] KESC 61 (KLR) (7 October 2022) (Ruling) cited with authority the Court of Appeal decision in **Civil Appeal No. 290 of 2012 Mumo Matemu v Trusted Society of Human Rights Alliance & 5 Others [2013] eKLR** that:

"A suit in Court is a 'solemn' process 'owned' solely by the parties. This is the reason why there are laws and Rules, under the Civil Procedure Code, regarding Parties to suits, and on who can be a party to a suit. A suit can be struck out if a wrong party is enjoined in it..."

- 119.** The Court of Appeal in **Civil Application No. E025 of 2021 Kihingo Village (Waridi Gardens) Management One Ltd v William Pike & Others** dismissed the Application with costs and noted that James Ndungu Gethenji had not shown any resolution from the company authorising the filing of the Application.
- 120.** In the case of *Assia Pharmaceuticals v Nairobi Veterinary Centre Ltd. Nairobi (Milimani) HCCC no 391 of 2000*: As regards litigation by an incorporated company, the directors are as a rule, the persons who have the authority to act for the company.
- 121.** 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.”

122. The lack of locus standi takes away the jurisdiction of the court.

123. The Supreme Court Case of **Dickson NgigiNgugi v Commissioner of Lands S.C Petition No. 9 of 2019 [2019] eKLR**, it was held that;

“[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”.

[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.”

- 124.** Having determined that the Applicant lacks locus standi to move the court, the court must down it to its tools, which are hereby do.
- 125.** The other grounds that have been raised in the notice of preliminary objection can only be determined if the court delves into the merits of the same, which the court cannot do having determined that it lacks jurisdiction.

Costs;

- 126.** In **Joseph Oduor Anode v. Kenya Red Cross Society, Nairobi High Court Civil Suit No. 66 of 2009; [2012] eKLR** Odunga, J. thus observed:

“...whereas this Court has the discretion when awarding costs, that discretion must, as usual, be exercised judicially. The first point of reference, with respect to the exercise of discretion is the guiding principles provided under the law. In matters of costs, the general rule as adumbrated in the aforesaid statute [the Civil Procedure Act] is that costs follow the event unless the court is satisfied otherwise. That satisfaction must, however, be patent on record. In other words, where the Court decides not to follow the general principle, the Court is enjoined to give reasons for not

doing so. In my view it is the failure to follow the general principle without reasons that would amount to arbitrary exercise of discretion ...” [emphasis supplied].

127. The Applicant shall shoulder cost of the suit.

Disposition;

128. The Applicant does not have the locus standi to institute the suit as a result of which the court is bereft of jurisdiction.

Order;

- 1) The notice of preliminary objection succeeds on the ground of jurisdiction.
- 2) Costs to the 2nd Respondent.

Dated, signed and delivered at Nairobi this 13th day of March, 2026.

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**J. CHIGITI (SC)
JUDGE**