

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
MISCELLANEOUS CIVIL APPLICATION NO. E188 OF 2025

**ANNAH KAMOLA KATHAMBO &
JOHN MUTIA MUTHUI**

(Suing as the legal representatives of)

KIHOME MUTHUI (DECEASED)

APPLICANTS

VERSUS

AMARSHAN LIMITED 1ST

RESPONDENT

REGISTRAR OF COMPANIES 2ND

RESPONDENT

R U L I N G

Introduction

1. Before this Court is the Applicant's Notice of Motion dated **19th February 2025** seeking orders for the **restoration of Amarshan Limited** (the 1st Respondent) to the Register of Companies pursuant to **Sections 916-918 of the Companies Act, 2015**.

2. The central issue is whether the Applicants, who hold a **valid money decree** issued in **Thika CMCC No. 708 of 2019**, are entitled to have the 1st Respondent restored to the Register following its dissolution through **Gazette Notice No. 11789 dated 13th September 2024**.
3. The background of the matter is that the Applicants obtained a judgment for **Kshs. 3,215,795 plus costs and interest** in a wrongful-death claim arising from the deceased's fatal injury allegedly caused by the 1st Respondent's negligence.
4. Before execution could be undertaken, the 1st Respondent was dissolved vide **Gazette Notice No. 11789 of 13th September 2024**.
5. The Applicants argue that the Respondent **failed to disclose** the pending suit and judgment to the Registrar contrary to **Sections 900 and 901** of the Companies Act, and that the Applicants, as creditors, were **never notified** or served with any dissolution documents.
6. According to the Applicants, the dissolution was undertaken **in bad faith** to defeat a lawful decree, and therefore restoration of the company is necessary to avoid rendering the decree a nullity.
7. On its part, the 1st Respondent opposed the application vide a replying affidavit sworn on **3rd September 2025** by Jitan

Shantilal Dhanani, a director of the 1st Respondent. It was lawfully wound up through **voluntary liquidation** due to insolvency.

8. The 1st Respondent asserted that the company underwent a lawful **voluntary winding up** due to insolvency, and that revival would be futile because the company allegedly has **no assets**, and therefore restoration would be futile.
9. It was further the 1st Respondent's position that the Gazette publication constituted sufficient notice to all parties, the Applicant herein included.
10. The 2nd Respondent did not participate in these proceedings despite proof of service.
11. The Application proceeded by way of written submissions. The Applicants in support of the application filed their submissions dated 10th September 2025 through the law firm of E.K. Mutua Advocates. The 1st Respondents' submissions dated 28th October 2025 were filed by their Advocates, Ngata Kamau & Co. Advocates.

Analysis and Determination

12. Having carefully considered the application, the response thereto, and the applicable law, the Court finds the following require determination:

- i. Whether the Applicants have locus standi to seek restoration under Section 916 of the Companies Act, 2015.
- ii. Whether the application was brought within the statutory timelines under Section 917.
- iii. Whether the grounds for restoration under Section 918 have been met

Whether the Applicants have the requisite locus standi

13. Section 916(2) of the Companies Act, 2025 provides an exhaustive list of persons who may apply for restoration. Relevant to this case is Section 916(2)(i), which provides that:

“A person who was a creditor of the company at the time of its being struck off or dissolved.”

14. Further, Section **893** of the Act defines “*creditor*” to include:
“...a contingent or prospective creditor.

15. In this case, it is undisputed that at the time dissolution was published on **13th September 2024**, the Applicants held a **valid money decree** arising from CMCC No. 708 of 2019. They therefore qualify as **creditors** within the meaning of the Act.

16. Courts have repeatedly affirmed that decree-holders have standing to seek restoration. In **Re Queensway Investments Ltd [2006] eKLR**, the Court held that:

“...a holder of a valid decree is entitled to seek restoration of a company to the register to avoid their judgment going to waste.”

17. Consequently, the Court finds that the Applicants have **the requisite locus** to bring this application.

Whether the application has been brought within the statutory timelines

18. Section **917(4)** provides a **six-year window** within which to seek restoration—except in personal injury claims, which have no time limit. It states that:

“In any other case, an application... may not be made after the expiry of six years from the date of dissolution.”

19. The application herein was filed on **21st February 2025**, a few months after the date of dissolution, 13th September 2024. It follows, therefore, that the same was **well within the statutory period**.

Whether grounds for restoration have been established

20. Section 918 sets out the grounds upon which a court may order restoration. It provides that the Court may order the company restored: -

- (a) if it was struck off while carrying on business;
- (b) if the striking off was done without compliance with sections 898-903;
- (c) “if in any other case the Court considers it just to do so.”

21. In the present case, the **Gazette Notice** reveals that dissolution occurred under **Section 897(4)**. Therefore, Section **918(a)**, which applies to administrative striking off under Sections 894-895, does **not** apply.

22. The Applicants maintain that the 1st Respondent’s directors failed to notify the Registrar of the pending litigation and existing decree; failed to serve the Applicants with the application for dissolution; and proceeded with dissolution despite being aware of liabilities.

23. Sections **900(1)(c)** and **901(2)(c)** require service of notice upon creditors or persons with potential claims, and that the Registrar must consider objections by persons “with potential claims.”

24. The Applicants insist they were never served. The Replying Affidavit **does not deny** the allegation of non-service. The

silence amounts to an implied admission. This failure constitutes **non-compliance with mandatory procedural requirements**, within the meaning of **Section 918(b)** of the Companies Act.

25. In **Agnator Kanini v Mwalimu Mamundi Autoparts Ltd [2017] eKLR**, the Court noted that:

“...applications for restoration under Sections 916 and 917 do not require proof that the company was carrying on business. What matters is whether procedural requirements were complied with or whether justice demands restoration.”

26. Thus, procedural non-compliance alone is a sufficient basis for restoration.

27. As to whether it would be in the interest of justice to have the Respondent company restored to the register, Section 918 (c) of the Companies Act provides that a restoration order may be made where the Court “considers it just to do so.” Such circumstances may include where the restoration is to prevent parties from evading lawful liabilities. It is the duty of the court to ensure that decrees are not rendered nugatory and the integrity of the judicial process is generally upheld.

28. Here, evidence on record reveals that the judgment debt herein arises from a **wrongful death claim**, relating to a

deceased's dependents—undoubtedly a matter touching on substantive justice.

29. Restoration would, in the view of the Court, serve the public interest in ensuring that the 1st Respondent does not evade lawful court decrees through corporate maneuvers.

30. Courts have consistently restored companies where restoration is necessary to enable enforcement of an existing decree. Authorities cited include: In **Re Queensway Investments Ltd (2006)**, where the Court restored a dissolved company to prevent a valid decree from being rendered nugatory.

31. Similarly, in **Kenya Revenue Authority v Tawfiq Mohamed & Co. Limited and 3 others (HCCOMISC E1033/2023)**, the Court, while allowing an application for reinstatement of a company for the purposes of enforcing tax liabilities, stated as follows:

“The Court does have power to bring back to existence, to resurrect, to bring back to life so to speak, a Company that had lost its life through deregistration. This is pursuant to **Section 916 of the Companies Act Cap 486** of the Laws of Kenya.”

32. The 1st Respondent argues that restoration is futile because the company has **no assets**. This argument misapprehends the purpose of Section 918. Restoration essentially allows:

- i. Inquiry into the company's affairs;
- ii. Possible tracing of assets;
- iii. Invocation of remedies against directors (including possible lifting of the veil if warranted);
- iv. Enabling execution attempts.

33. It is not a precondition that the creditor demonstrates the **existence of assets** before restoration.

34. In **Agnator Kanini v Mwalimu Mamundi Autoparts Ltd (2017)**, clarifying that proof of carrying on business is not required for Court-led restoration under Sections 916-917.

35. In the circumstances, and in the broader interest of justice, the Court is of the informed view that restoration is the **appropriate** remedy.

36. Accordingly, the Court finds merit in the application and issues the following final orders: -

- i. **Amarshan Limited** is **restored** to the Register of Companies pursuant to Sections **916-918 of the Companies Act, 2015**.

- ii. The **Registrar of Companies** shall effect and record the restoration forthwith and publish the necessary notice in the **Kenya Gazette**.
- iii. Upon restoration, the company shall be deemed to have continued in existence **as if its name had never been struck off**, pursuant to Section **919**.
- iv. **Costs** of the application are awarded to the **Applicants**.

37. It is so ordered.

SIGNED, DATED, and DELIVERED IN VIRTUAL COURT THIS

19TH MARCH 2026



**ADO MOSES
JUDGE**

In the presence of: -

C/A - Moses

.....for the Applicant

..... for the Respondent