



Republic v Registrar Business Registration Services & 2 others; Goni (Ex parte) (Judicial Review Miscellaneous Application E248 of 2024) [2026] KEHC 5116 (KLR) (Judicial Review) (21 April 2026) (Ruling)

Neutral citation: [2026] KEHC 5116 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
JUDICIAL REVIEW MISCELLANEOUS APPLICATION E248 OF 2024
JM CHIGITI, J
APRIL 21, 2026
IN THE MATTER OF AN APPLICATION FOR ORDERS MANDAMUS**

BETWEEN

REPUBLIC APPLICANT

AND

THE REGISTRAR BUSINESS REGISTRATION SERVICES RESPONDENT

AND

YUSSUF ABDIKADIR 1ST INTERESTED PARTY

NASRA ALI 2ND INTERESTED PARTY

AND

MOHAMED YUSSUF GONI EX PARTE

RULING

1. The applicant moved the court through the Application dated 12th November 2024 seeking the orders that an order of mandamus compelling the Respondent to reinstate the Applicant’s 500 shares and directorship in the undertaking known as Doha Traders Limited and costs.
2. The Applicant argues that he was a director and shareholder in the said undertaking from the inception together with the 1st interested party.
3. It is his case that through acts of fraud, the Applicants shares in the said Company and his directorship were unlawfully transferred to the 2nd Interested Party.



4. There was no valuable consideration paid towards the acquisition of the Applicant's shares in the said Company and the said Applicant was excluded from the affairs and running of Doha Trading Company.
5. The applicant is concerned that the 1st Interested Party, has single handedly run the affairs of the Company to the exclusion of the Applicant.
6. The applicant is also troubled that the 2nd Interested Party was incorporated as a shareholder and director of the company without following due process.
7. The Applicant argues that the fraud was reported to the Criminal Investigations department and the documents purporting to transfer shares and the affidavit in support thereof were subjected to forensic examination.
8. The outcome of the said examination was that the documents in support of the transfer of the Applicants shares to the 2nd Interested Party were forgeries and that it is not the Applicant who transferred his shares to the 2nd Interested Party.
9. The outcome of the said examination was presented to the Respondent with a demand that the Applicant's shares in the Company be reinstated and that the transfer of the Applicants shares to the 2nd Interested Party be cancelled and revoked and that the Applicant be reinstated as a shareholder and director of the undertaking known as Doha Trading Company.
10. Despite service of the said demand letter and further furnishing the Respondent with documents and evidence supporting the application for reinstatement and the evidence of fraud committed, the Respondent has refused to act on the same.
11. The Respondent was legally bound to discharge their mandate to cancel the illegal transfer of the Applicant's shares to the 2nd Interested Party and to reinstate the Applicant as a shareholder and director of Doha Trading Company.
12. The Respondent has afforded no explanation for the failure to discharge this administrative duty hence this suit.
13. As the custodian of business records, the said Registrar is under legal obligation to maintain correct records and to rectify all mistakes and fraudulent activities that may be initiated by anyone to falsify the records in their custody.
14. It submits that in High Court Judicial Review Application No.259 of 2019, Clement Mwatsama Versus the Attorney General & Another, Hon Justice Aburili held that;

"mandamus is a remedy through which a public officer to do a duty imposed upon him by law"
15. The Registrar Business Registrar is under obligation and should be compelled by orders mandamus to rectify the register of Doha Trading Company Limited to reinstate the Applicant as a shareholder and director and to remove the 2nd interested Party as a shareholder of the company.
16. The Respondent should also be compelled by through an order of mandamus to remove all entries following illegal transfer of the Applicant and to restore the Applicant as shareholder and director.
17. In challenging the application, the Respondent filed a Notice of Preliminary objection dated 11th day of August 2025 raising the following grounds;



1. That this court lacks the competent jurisdiction to preside over this matter.
2. That the application is an appeal disguised as a judicial review application seeking a merit review of the impugned decision which jurisdiction this court lacks by dint of the provisions of section 3 of The Companies Act as read together with practice issued by the Chief Justice on the 18th November, 1997.

The issue for determination is whether it has jurisdiction and whether the application has merit.

Analysis and Determination;

18. The Court of Appeal in Barclays Bank of Kenya vs Pyritic Guards Limited [2015] eKLR, stated that:

“It is also trite law that a point of law can be raised at any stage, even though not raised before the court of first instance. The Court can also on its own motion raise a point of law at any point and make a determination based on the same even where such point has not been canvassed by the parties. The learned judge did not therefore do anything outrageous by raising the issue of non-compliance with Regulation 79 of Table A of the Companies Act and acting on it.” (Emphasis added)

(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. It cannot be conferred by judicial craft. See Samuel Kamau Macharia & Another v Kenya Commercial Bank & 2 Others, SC Application No. 2 of 2011; [2012] eKLR. Nor can parties, by consent confer on a court power it does not have.”

19. In Republic v Registrar of Companies & 2 others; Waterfront Outlet Limited (C.147966) (Interested Party); Waterfront Outlets Limited (CPR/2015/214503) (Exparte) (Miscellaneous Application E059 of 2022) [2023] KEHC 227 (KLR) (Judicial Review) (19 January 2023) (Ruling) the court held:-

“Suffice to note that even with the expanded scope of judicial review under the new constitutional dispensation, judicial review still remains a special jurisdiction that is majorly restricted to examination of whether an administrative decision conforms to the requirements of legality, rationality and procedural propriety. It is opportune to add that the judicial review process cannot be a substitute to statutorily provided for jurisdiction of other courts or bodies and the judicial review court cannot and should not assume jurisdiction where statute clearly places jurisdiction at the door of another court or body. To echo the words of the Supreme Court in Samuel Kamau Macharia v Kenya Commercial Bank & 2 Others (supra), “ 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 itself jurisdiction exceeding that which is conferred



upon it by law.” It is this court’s finding and I so hold that this court lacks the jurisdiction to determine this suit”

20. In Republic v Registrar of Companies & 5 others ExParte Midlands Company Limited [2019] eKLR the court held that;

“ 38. Secondly, there are alternative fora that are more appropriate to resolve the factual disputes raised in this application, such as the Civil or Commercial Division of the High Court, where no restrictions or limitations exist as those that arise in judicial review”

21. Although the judicial review division is a court with the status of the High Court under Article 165 of *The Constitution*, the Commercial division of the High Court is best suited to hear this suit.

22. Section 11(1) of the *High Court (Organization and Administration) Act* provides that for purposes of promoting effectiveness and efficiency in the administration of justice and promoting judicial performance, the Chief Justice may, where the workload and the number of judges in a station permit, establish any of the following divisions—

- a) the Family and Children Division;
- b) the Commercial Division;

23. The court has looked at the issues that the applicant is raising.

24. It is the Applicant's case that the respondent allowed changes in the company records unilaterally.

25. The applicant argues that the respondent has failed to respond to its letters around this issue.

26. Upon applying the above concerns to the practice directions to this case, it is my considered view that the issues raised by the Applicant herein are matters that would be best solved at the Commercial Division of The High Court.

27. The Applicant argued that the Respondents actions were inconsistent with the requirements of the *Companies Act*.

28. The applicant has through his pleadings demonstrated that he is moving this case for purposes of advancing a Company related dispute.

29. The judicial review’s court focus on the procedure, the process, the legality or illegality in how the decision maker arrived at the impugned decision.

30. The court’s mandate is to find out whether the decision maker acted with the rationality that befits the situation.

31. The judicial review court has no capacity to call witnesses to testify.

32. This court cannot carry out a merit analysis which the applicant in this case will have to embrace if the court is to determine the issues of shareholding, issuance of notices, the way the interested parties inter Alia. This court declines to allow that.

33. This court is satisfied that what the applicant is seeking are reliefs that cannot be granted by this court as a result of which this court lacks jurisdiction to preside over this suit.



34. The Supreme Court Case of Dickson Ngigi Ngugi v Commissioner of Lands S.C Petition No. 9 of 2019 [2019] eKLR stated;

“(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 judge 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”.

35. This court lacks jurisdiction.

Order;

This suit is hereby transferred to the High Court Commercial Division.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 21ST DAY OF APRIL 2026

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J. CHIGITI (SC)

JUDGE

