



Republic v Registrar of Companies; Alcon Holdings Limited & 2 others (Interested Parties); Hanspal (As Administrator of the Estate of Kultar Hanspal) (Exparte Applicant) (Commercial Case 032 of 2021) [2025] KEHC 1375 (KLR) (Commercial and Tax) (27 February 2025) (Ruling)

Neutral citation: [2025] KEHC 1375 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE 032 OF 2021
PM MULWA, J
FEBRUARY 27, 2025
FORMERLY JUDICIAL REVIEW CASE NO. E096 OF 2021)
IN THE MATTER OF AN APPLICATION FOR ORDERS
OF CERTIORARI, MANDAMUS AND PROHIBITION
AND
IN THE MATTER OF ALCON HOLDINGS LIMITED

BETWEEN

REPUBLIC APPLICANT

AND

REGISTRAR OF COMPANIES RESPONDENT

AND

ALCON HOLDINGS LIMITED INTERESTED PARTY

VIJAY HANSPAL (AS ADMINISTRATOR OF THE ESTATE OF INDERJIT HANSPAL SINGH) INTERESTED PARTY

JASPRIYA KAUR HANSPAL & SACHA KAUR HANSPAL (AS ADMINISTRATORS OF THE ESTATE OF DAVINDER SINGH HANSPAL) INTERESTED PARTY

AND

ALKA ROSHANLAL HANSPAL (AS ADMINISTRATOR OF THE ESTATE OF KULTAR HANSPAL) EXPARTE APPLICANT



RULING

Introduction and background

1. By an application dated 27th July 2021, the Ex Parte Applicant (Alka) sought leave to commence judicial review proceedings under Order 53 Rules 1, 2 and 3 of the Civil Procedure Rules which application was allowed in a ruling of the court dated 24th October 2022. On 1st November 2022, Alka filed an evenly dated Notice of Motion under Order 53, Rules 3, 4, 5, 6 and 7 of the Civil Procedure Rules. She seeks to quash the decision of the Respondent (the Registrar) communicated in the letter dated 7th May 2021 altering the shareholding of the 3rd Interested Party (the Company) by removing the name of Alka and restoring 334 shares back to her. She also seeks an order of mandamus to compel the Registrar to restore her as a shareholder of the 334 shares in the Company and an order of prohibition prohibiting the Interested Parties or any persons acting on their behalf from taking any actions in exercise of their rights as the directors or shareholders of the Company.
2. This application is grounded and supported by the Statement of Facts and Alka's verifying affidavit and supplementary affidavit sworn on 27th July 2021 and 14th February 2022 respectively as well as the supporting affidavit of Emmanuel Kenga, a Forensic Document Examiner, sworn on 11th February 2022. It is opposed by the Registrar through the replying affidavit sworn on 24th November 2023 by Zacharia Mwangi and by the 2nd Interested Parties through the replying affidavit of Jaspriya Kaur Hanspal sworn on 1st February 2023. In addition to their depositions, the parties have also filed written submissions which were highlighted by their respective counsel.
3. As was set out in the ruling of 24th October 2022, the dispute in this case concerns the shareholding of the Company incorporated on 5th July 1976 by three shareholders who are now deceased and who held the following shares; Kultar Singh Hanspal (Kultar) -334 shares, Davinder Singh Hanspal (Davinder) – 333 shares and Inderjit Singh Hanspal (Inderjit) – 333 shares. Alka states that she was Kultar's wife and that following his death, she applied for and obtained the grant of his estate which was confirmed in her favour in NRB HC Succession Cause No. 928 of 2012. As a result of the confirmation, she states that the 334 shares were transmitted to her and the shareholding registered in her name. There is evidence that the Company shareholding was changed in 2005 when Kultar transferred his shares to Davinder who then held 667 shares. When Davinder died, his administrators, the 2nd Interested Parties were appointed administrators in NRB HC Succession Cause No. 113 of 2018 and as a result his shares were transmitted to them.
4. The dispute in this matter revolves around the changes effected by the Registrar as a result of the contending succession cases. The Registrar acted on Alka's grant and effected changes on the Company register. The 2nd Interested Parties contested these changes by writing to the Registrar and in the letter dated 7th April 2021, the Registrar addressed Alka and her advocate on the complaints raised by the 2nd Interested Parties and calling on them to respond to which the Registrar would later invoke the provisions of Section 862 of the *Companies Act* and Alka's name was expunged from the Register as per its letter dated 7th May 2021.
5. Alka complains that this letter from the Registrar was never served upon her and that the Registrar acted ultra vires Section 862 of the *Companies Act* and that it acted unilaterally, unreasonably and unprocedurally. Alka contends that the purported transfer of shares by Kultar to Davinder is a forgery and an illegality and that the said 334 shares were always held by Kultar and subsequently transmitted to her.



6. In response, the Registrar states that in the Register, there is a transfer form dated 16th February 2005, transferring Kultar's 334 shares to Davinder and that on 30th May 2005, the Registrar issued a CR12 capturing Davinder with 667 shares and Inderjit with 333 shares. That this transfer is subject of ongoing litigation in Civil Case No. 308 of 2015 however, there were various activities ongoing in relation to this company to wit; on 26th October 2018, there was a change in the record of the company. The record reflected that Kultar was a shareholder of the Company holding 334 shares as was before the 2005 transfer and that this entry is made by an officer by the name of Samwel Mwongera Kibori. On 29th October 2018, the Registrar received a notification of the appointment of a secretary vide CR10 and CR12, appointing one Stephen Mwaura Muhia as the secretary of the Company. The Registrar states that it does not have any board resolution indicating that the said secretary was indeed appointed by the board. The forms were presented by the secretary being appointed.
7. On 6th March 2019, there was a complaint from MMC Africa Law on the changes above and on 13th March 2019, the change above was reversed and Davinder now appeared to hold his initial 333 shares plus the shares transferred to him in 2005. On 21st March 2019, Kultar again features with 334 shares but the Registrar states that there is no document or anything else pointing to why the change was made and on 8th April 2019, the change above was reversed. On 26th June 2019, S.M. Muhia & Company Advocates wrote to the Registrar indicating that Kultar was of unsound mind and that he could not have executed the transfer in 2005. The communication attached the orders issued on 4th December 2002 in Miscellaneous Civil Case No. 1390 of 2002.
8. There was also a professional undertaking issued by S.M. Muhia & Company Advocates dated 4th September 2019 which stated that the position of the company is as follows;
 - Inderjit Hanspal Singh - Shareholder - 333
 - Kultar Singh Hanspal - Shareholder - 334
 - Davinder Singh Hanspal - Shareholder/Director - 333
 - Total shares - 1000
9. On 7th October 2020, there was an application made on the e-Citizen Platform which sought to transfer shares allegedly held by the Estate of Kultar Singh Hanspal, who had passed on sometimes in 2012. Alka presented herself as the administrator of the estate and the application was supported by extract of resolutions and a transfer form and these changes formed the basis of the complaint by MMC Africa Law, representing the estate of Davinder. The Registrar noted that the entries introducing Kultar as a shareholder may have been an attempt to rectify the register in relation to the representations made by S.M. Muhia & Company Advocates that Kultar did not have capacity at the time when the transfer was executed. The Registrar claims that the Estate of Davinder was not given an opportunity to respond to this claim and that the register was rectified without the procedure laid down in Section 862 requiring the Registrar to call for objections. It was further noted that Alka who had since benefited from this rectification, had lodged a Civil Case No. 328 of 2015 seeking to have the 2005 transfer declared void. That this information was not disclosed to the Registrar at this point and thus the rectification was made during the pendency of a suit that sought to address the very issues that the rectification sought to address. The Registrar states that the question of the capacity of Kultar can best be determined by a court of law since the issue is highly contested and might require that both parties present their evidence before court which would in turn make a pronouncement on this issue based on the evidence tendered.
10. Furthermore, that the Registrar may not entertain the question of capacity at this point considering that it is directly in issue in the suit mentioned and the court is properly seized of the matter. That having made the above observations, the Registrar vide the letter dated 7th April 2021 addressed to Alka



was asked to respond to the issues raised in the two letters by the Interested Parties within 14 days failure to which the Registrar would act to rectify the register. That through letters dated 22nd April 2021, both Alka and S.M. Muhia Advocates responded to the Registrar's letter and that having received the two letters, it is evident that Alka was accorded an opportunity to be heard as she responded. Having received the response, the Registrar considered the matter and reached a conclusion that the entry of Alka as a shareholder was irregular as it ought not to have been made as it would appear that the entry into the register introducing Alka was not regular since there were no shares that could be transferred to her. The person to whom she is supposed to have received the shares had already exited the Company and transferred his shares long before his death.

11. The Registrar took the decision that the register of the Company be restored to the position it was before the case was lodged in court and it also concluded to await the determination of the court on the issue of the 2005 transfer since the same will inform the next steps. The Registrar also made a decision that further entries in the register of the Company be halted after the rectification until such a time when an order of the court is lodged with the Registry. To the foregoing, by letters dated 7th May 2021 the Registrar informed Alka and other parties that in light of the revelations made to it and the existence of Civil Case No. 328 of 2015, it has rectified the register pursuant to the provisions of Section 862 of the Companies Act and expunged all entries relating to Alka.
12. As such, the Registrar avers that the decision was not irrational, ultra vires nor unconstitutional but that it met all the hallmarks of fair administrative hearing as Alka was accorded an opportunity to be heard and she responded. That judicial review is not the appropriate procedure in the circumstances to determine this matter as the matter is complex and would require trial through viva voce evidence which is not available in judicial review proceedings. That Alka has since filed another application being HCCOMM MISC/E781/2023 before this division, as well as HCCC No. 328 of 2015 and therefore the existence of multiple suits might embarrass the court and is an abuse of court process. For these reasons, the Registrar urges the court to dismiss Alka's application.
13. The 2nd Interested Parties also state that Kultar transferred his 334 shares in the Company to Davinder through the share transfer form dated 16th February 2005 and that this was captured in a board resolution of the same date and following a meeting held by the directors of the Company, Kultar, Davinder and Inderjit. That the the annual returns filed on 27th April 2005 captured the transfer of 334 shares, from Kultar to Davinder. The 2nd Interested Parties confirm that they sought rectification of the register once it came to their attention that Alka had been included as a shareholder and that the Registrar by a letter dated 7th April 2021 wrote to the Alka and her Advocates, S.M. Muhia & Company Advocates, who were instrumental to the changes, requiring them to respond to the complaint alleged on changes made to the Register within 14 days from the date thereof. That Alka and her advocates were also asked through the said letter to respond to the allegation that the changes to the Company records were made without disclosure of material facts, including the pendency of a Court Case; Nairobi High Court Civil Case No. 328 of 2015. As there was no response from them, the Registrar, by a letter dated 27th June 2021 communicated the decision to rectify the records and restore Davinder as the owner of 667 shares in the Company and expunge Alka as a shareholder with 334 shares.
14. The 2nd Interested Parties state that in the circumstances, it is clear that Alka was given ample opportunity to respond to the complaint lodged within 14 days by the Registrar, and even if, for some reason, Alka did not get the letter from the Registrar, she should have first brought this fact to the attention of the Registrar and seek to respond first. That it is only if the Registrar refused to hear her that she could resort to the Court by way of judicial review. As such, the 2nd Interested Parties assert that there is no evidence of any violation of Article 47 of the Constitution or provisions of the Fair Administrative Action Act. That the Registrar acted within its jurisdiction and mandate and within the



confines of the law and therefore it did not act unreasonably, ultra vires or in violation of the principles of natural justice. The 2nd Interested Parties thus urge the court to dismiss the application with costs.

Analysis and Determination

15. I have gone through the parties' pleadings and submissions. Before delving into the issues for determination, I think it is appropriate to set out the jurisdiction and scope of the Court when it comes to judicial review matters. I agree with the parties' submissions that superior courts, more so our Supreme Court have circumscribed the limits of traditional judicial review. In *Saisi & 7 others v Director of Public Prosecutions & 2 others* [2023] KESC 6 (KLR), the apex court stated as follows:

“(76) Be that as it may, it is the Court’s firm view that the intention was never to transform judicial review into full-fledged inquiry into the merits of a matter. Neither was the intention to convert a judicial review court into an appellate court. We say this for several reasons. First, the nature of evidence in judicial review proceedings is based on affidavit evidence. This may not be the best suited form of evidence for a court to try disputed facts or issues and then pronounce itself on the merits or demerits of a case. More so on technical or specialized issues, as the specialized institutions are better placed to do so. Second, the courts are limited in the nature of reliefs that they may grant to those set out in Section 11 (1) and (2) of the Fair Administrative Actions Act. Third, the Court may not substitute the decision it is reviewing with one of its own. The court may not set about forming its own preferred view of the evidence, rather it may only quash an impugned decision. This is codified in Section 11 (1)(e) and (h) of the *Fair Administrative Action Act*. The merits of a case are best analyzed in a trial or on appeal after hearing testimony, cross-examination of witnesses and examining evidence adduced. Finally, as this Court held in the case of *Kenya Vision 2030 Delivery Board v The Commission on Administrative Justice, the Attorney General and Eng. Judah Abekah*, SC Petition 42 of 2019; [2021] eKLR, in matters involving the exercise of judgment and discretion, a public officer or public agency can only be directed to take action; it cannot be directed in the manner or the particular way the discretion is to be exercised.”

16. In *Dande & 3 others v Inspector General, National Police Service & 5 others* (Petition 6 (E007), 4 (E005) & 8 (E010) of 2022 (Consolidated) [2023] KESC 40 (KLR) the apex court stated that when a party approaches a court under the provisions of *the Constitution* then the court ought to carry out a merit review of the case. However, if a party files a suit under the provisions of Order 53 of the Civil Procedure Rules and does not claim any violation of rights or even violation of *the Constitution*, then the Court can only limit itself to the process and manner in which the decision complained of was reached or action taken and not the merits of the decision per se.

17. With the above principles and guidelines in mind, I now turn to the substance of the application. It is not lost that Alka’s application is anchored under Order 53 of the Rules, meaning that the court can only interrogate a process-based review of her application. As such, the court will determine whether the Registrar’s decision as per its letter of 7th May 2021 was procedural and thus lawful. According to Alka, this decision was arbitrary in that she was never given an opportunity to present her case on the issue of removing her as a shareholder of the Company prior to the Registrar arriving at its decision. She contended that the letter of 7th April 2021 by the Registrar was never sent to her and that she only became aware of this letter in succession proceedings being Nairobi HC Succession Cause 113 of 2018.



18. However, the Registrar deponed that this letter was actually responded to by Alka herself through her letter of 22nd April 2021 and through her advocates' letter of the same date and that both letters were received by the Registrar on 23rd April 2021, before the impugned decision was made. This is proof that the Registrar's earlier letter of 7th April 2021 was received by Alka and her advocate and it was responded to. While it could be true that Alka may have learnt of these complaints in different proceedings, I fail to find the prejudice that was occasioned upon her, considering that she made a response before the Registrar made its decision.
19. The Registrar also deponed that before rectifying the register, it conducted a historical analysis of the register and forwarded the Interested Parties' complaints hence the responses by Alka and her advocate of 22nd April 2021. The Registrar stated that it was after this analysis and receipt of the response from Alka and her advocates that it made its decision of 7th May 2021. From the foregoing, I fail to find how Alka was denied an opportunity to be heard and I find no procedural impropriety, illegality or irrationality in the manner in which the Registrar arrived at its decision as the same was arrived at after considering the historical background of the Company and the parties' positions.
20. In line with the Supreme Court' decision in Saisi & 7 others v Director of Public Prosecutions & 2 others this court rejects the entreaty by Alka to discuss the merits of the Registrar's decision or that the Report by the Forensic Examiner supports her position that the impugned transfer was a forgery. In any event, I note that this issue is set to be determined in Civil Case No. 308 of 2015 at least going by the pleadings of the case annexed by the Registrar and as such, this court cannot comment on the legality of the said transfer.

Conclusion and Disposition

21. For these reasons, it is my finding that the process followed by the Registrar throughout the proceedings before it as well as the making of the decision of 7th May 2021 was fair, objective and procedural. The Ex-parte Applicant's Notice of Motion dated 1st November 2022 is not merited and is dismissed with costs to the Registrar and the 2nd Interested Parties.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 27TH DAY OF FEBRUARY 2025.

PETER M. MULWA

JUDGE

In the presence of:

Mr. Harrison Kinyanjui for Applicant

N/A for Respondent

Mr. Mituga for 1st Interested Party

Mr. Opole h/b for Mr. Musyoka for 2nd Interested Party

Court Assistant: Carlos

