



**Kenya Revenue Authority v Che Lu Construction Company
Limited & 3 others (Miscellaneous Application E1026 of 2023)
[2025] KEHC 5105 (KLR) (Commercial and Tax) (25 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5105 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E1026 OF 2023**

**RC RUTTO, J
APRIL 25, 2025**

BETWEEN

KENYA REVENUE AUTHORITY APPLICANT

AND

**CHE LU CONSTRUCTION COMPANY LIMITED 1ST RESPONDENT
ZHANG QINWEN 2ND RESPONDENT
VINCENT MAWIRA MARANGU 3RD RESPONDENT
REGISTRAR OF COMPANIES 4TH RESPONDENT**

RULING

1. Before this court for determination is a Notice of Motion Application seeking that the Registrar of Companies restores Chan Lu Construction Company Limited to the Register of Companies. The Application is premised under Sections 916 and 917 of the [Companies Act](#) and Section 3A of the [Civil Procedure Act](#).
2. The application is supported by the affidavit sworn by Victor Mino, a duly authorized officer of the Applicant appointed under Section 13 of the Kenya Revenue Authority. They deponed that that upon the 1st Respondent's application and through the Gazette Notice No. 7484 dated 23rd July 2021 the Registrar of Companies struck off the 1st Respondent from the Companies Register. That in making the application, the 1st Respondent failed to serve the Applicant herein with a copy of the application contrary to Section 900 of the [Companies Act](#) and equally failed to apply to deregister its tax obligations and cancellation of its PIN P051588520L as required under Section 36 of the Value- Added Act and Sections 10 and 14 of the [Tax Procedures Act](#).



3. The Applicant deposed that the 1st Respondent owes it a total of Kshs.262,752,670.23 being unpaid income tax amounting to Kshs.160,025,668.22, Income Tax Withholding Tax amounting to Kshs.224,005.00 and VAT amounting to Kshs.102,502,997.02 which continues to accrue interest and penalty. Further, that the 1st Respondent failed to apply for deregistration of its tax liabilities thus accruing penalty of Kshs.1,000,000.00 as prescribed under Section 81(2) of the [Tax Procedures Act](#). That the 2nd and 3rd Respondents are the directors of the 1st Respondent and therefore responsible for the operations of the 1st Respondent.
4. It was also deposed that the 1st Respondent was struck off the companies Register before clearing the taxes due which are considered a debt hence this application. It was buttressed that Section 916(1)(c) (ii) and (2)(f) of the [Companies Act](#) allows this court to restore the 1st Respondent to the Register of Companies for it to account for the unpaid taxes.
5. The Respondents opposed the application by filing a Replying Affidavit sworn on 25th July 2024 by Zhang Qinwen. He deposed that the Registrar of Companies cannot not strike off the name of a company from the Register until the expiry of three months from the date of publication in the Kenya Gazette a Notice inviting any person to show cause why the name of the company should not be struck off. He asserted that it was the Applicant's own indolence that led to its failure to show cause within the prescribed period, and therefore the allegation of non-service is unfounded. He further contended that the power to restore a company is a discretionary remedy, the exercise of which is subject to material considerations by the Court. In the present case, the Applicant is undeserving of the Court's discretion, having failed to object to the Gazette Notice issued by the Registrar. The 1st and 2nd Respondents also denied owing the Applicant the sum of Kshs.262,752,670.23.
6. Pursuant to the directions issued by this Court, the application was canvassed by way of written submissions. The Applicant filed its submissions dated 1st August 2024 and supplementary submissions dated 30th October 2024 while the 1st and 2nd Respondent's submissions are dated 25th October 2024.
7. The 3rd & 4th respondents were served but never filed any document on record to oppose or support the application.

Applicant's Submissions

8. The Applicant submitted on whether the order sought is merited. It submitted that the 1st Respondent, made an application pursuant to Section 897(1) of the [Companies Act](#), and was subsequently struck off the Register of Companies. However, the 1st Respondent failed to notify the Applicant of the intended strike-off, thereby necessitating the present application for restoration under Sections 916 and 917 of the [Companies Act](#). The Applicant reiterated that the 1st Respondent owes it a sum of Kshs.262,752,670.23 in tax.
9. The Applicant further submitted that, under Section 900(1) of the [Companies Act](#), the operative word "shall" denotes a mandatory obligation imposed by law. In support of this interpretation, the Applicant relied on the case of Republic v Council of Legal Education & Another ex parte Sabiha Kassamia & Another [2018] eKLR, where the court held that the term "shall" connotes a command or legislative mandate. Moreover, the Applicant submitted that Section 900(3) of the [Companies Act](#) provides only one instance in which the duty imposed under Section 900 ceases to apply namely, where the application for restoration is withdrawn before the expiry of the period for giving notice of the application.



10. It was the Applicant submission that it had complied with the provisions of Section 917(4) of the [Companies Act](#), having filed the instant application within six years from the date of the 1st Respondent's dissolution. It further submitted that the Court, pursuant to Section 918(1) of the [Companies Act](#), has the discretion to restore a company to the Register of Companies if it was struck off under Section 897 while the requirements under Sections 898 to 903 had not been complied with.
11. Additionally, the Applicant submitted that the 1st Respondent failed to comply with Section 10 of the [Tax Procedures Act](#) and Section 36(2) of the [Value Added Tax Act](#) by failing to apply for deregistration of its VAT registration. As a result, the 1st Respondent has accrued a statutory penalty of Kshs.1,000,000.00 The Applicant argued that, having initiated the process for dissolution, the 1st Respondent ought to have simultaneously applied for deregistration of its tax obligations.
12. In its supplementary submissions, the Applicant contended that the taxes owed by the 1st Respondent arose from the 1st Respondent's own declarations. As such, the 1st Respondent cannot claim ignorance of the Applicant's status as a creditor at the time of its application for dissolution. In distinguishing the *Casmil Lucas Nyangau & 9 Others v Gusii Mwalimu Sacco Limited & Another*, Kisii HC Misc. Appl. No. 2 of 2017 [2017] eKLR, (the Casmil case) from the present application, the Applicant submitted that in the Casmil case, the petition for restoration of the company had been filed outside the time limits prescribed under Sections 338(1) and 339(6) of the repealed [Companies Act](#). The Applicant argued that the failure to object within the three-month period does not extinguish the 1st Respondent's statutory obligation to serve a copy of the application under Section 916 of the [Companies Act](#), particularly since the debt remains outstanding.
13. While relying on the case of *Bemarc Limited v Commissioner of Domestic Taxes (Tax Appeal E316 of 2020)* [2022] KEHC 18123 (KLR), the Applicant further submitted that under Section 29 of the [Tax Procedures Act](#), the Commissioner is entitled to use their best judgment to assess a taxpayer's liability based on available documents and information from other reliable sources.
14. In response to the 1st and 2nd Respondents' reliance on the *Abigael Barma versus Mwangi Theuri ELC* No. 393 of 2013, the Applicant submitted that, in that matter, the court was sitting as a court of equity and the applicants therein were seeking equitable remedies, a scenario that differs from the present case. The Applicant further submitted that it has complied with the provisions of Section 917(4) of the [Companies Act](#), in line with the court's findings in *Sylvester Barake Maina & Casmil Lucas Nyangau v Registrar of Companies* [2019] KEHC 7758 (KLR).
15. The Applicant concluded its submissions by placing reliance on High Court Miscellaneous Application No. E030 of 2023 *Reph Opiyo Ojwang v Habo Group of Companies Limited* (to be restored to the register) & 3 others, and submitted that the court has the discretion and jurisdiction to grant orders for the restoration of a company to the Register of Companies.

1st & 2nd Respondent's Submissions

16. The 1st & 2nd Respondents submitted on two issues for determination, that is, whether the 1st Respondent was lawfully struck off the Register of Companies in compliance with the provisions of the [Companies Act](#) and whether the Applicant is entitled to the reliefs sought in the Application dated 6th November 2023.
17. On the first issue, the 1st and 2nd Respondents submitted that the 1st Respondent, through its directors, applied for its name to be struck off the Register of Companies in 2021. They stated that the application was reviewed by the 4th Respondent, who subsequently published a notice in the Kenya Gazette inviting any person to show cause why the name of the 1st Respondent should not be struck



- off the register. The 1st and 2nd Respondents further submitted that the allegations of non-compliance with Section 900 of the *Companies Act*, as well as the failure to deregister tax obligations or cancel the 1st Respondent's Personal Identification Number (PIN), are unfounded. They argued that the Kenya Gazette is a public publication available for general information and that the Applicant ought to have acted upon the notice.
18. In support of their position, the 1st and 2nd Respondents relied on the case of Sylvester Barake Maina & Another v Registrar of Companies [2019] eKLR, submitting that the *Companies Act* is a complete code governing company regulation in Kenya. They contended that the Applicant, in total disregard of Section 897(3)(b) of the *Companies Act*, failed to utilize the three-month period provided to lodge an objection to the striking off of the 1st Respondent from the Register. Additionally, they relied on the decision in the Casmil case to argue that the Court should not entertain the present application, as the Applicant had slept on its rights and failed to object within the statutory three-month period. Further reliance was placed on the case of Ibrahim Mungara Mwangi v Francis Ndegwa Mwangi [2014] eKLR.
 19. The 1st and 2nd Respondents submitted that if indeed the Applicant alleges that the 1st Respondent had unpaid taxes and penalties, it was incumbent upon the Applicant to notify the 1st Respondent of the same as and when the amounts became due and payable, as provided under Section 89(3) of the *Tax Procedures Act*. They contended that the burden lay on the Applicant to demonstrate that such notification of unpaid taxes and penalties was made prior to the 1st Respondent being struck off the Register of Companies. In the absence of such evidence, they argued, the 1st Respondent was under no obligation to serve a copy of the application upon the Applicant.
 20. While relying on the case of Muriungi Kanoru Jeremiah v Stephen Ungu M'mwarabwa [2015] eKLR, the 1st and 2nd Respondents submitted that the 1st Respondent was lawfully struck off the Register of Companies in accordance with the provisions of the *Companies Act*.
 21. On the second issue, the 1st and 2nd Respondents submitted that the present application amounts to an abuse of the court process. They asserted that, having been filed more than three years after the 1st Respondent was struck off the register, the application is an afterthought and should not be entertained by the Court. Reliance was placed on the case of Abigael Barma versus Mwangi Theuri ELC No. 393 of 2013; Joshua Ngatu versus Jane Mpinda & 3 Others [2019]eKLR as well as Juba versus Pasta (Civil appeal 30 of 2020 (2023) KEHC 1575 (KLR) to urge that equity aids the vigilant and not the indolent.
 22. In conclusion, the 1st and 2nd Respondents urged the Court to dismiss the application with costs.

Analysis and Determination

23. I have considered the rival affidavits by parties and submissions made in respect of the motion and the issues arising for determination is Whether the 1st Respondent should be restored to the Register of Companies
24. It is not in dispute that the 1st Respondent, through its directors, applied for its name to be struck off the Register of Companies pursuant to Section 897(1) of the *Companies Act*. It is further uncontested that, in accordance with Section 897(3) of the *Companies Act*, the Registrar of Companies published a notice in the Kenya Gazette notifying the public of the said application and inviting any person to show cause why the name of the company should not be struck off. There is no evidence that any such objection was lodged within the stipulated three-month period, and as such, the Registrar, in compliance with Section 897(4), proceeded to strike off the name of the company from the register on 23rd July 2021.



25. The Applicant, on the basis of his assertion that he is a creditor, has moved this Court seeking restoration orders on ground that the 1st Respondent owes it unpaid taxes amounting to Kshs. 262,752,670.23. The Applicant further contends that the 1st Respondent failed to apply for deregistration of its tax obligations in accordance with Section 36 of the *Value Added Tax Act*, read together with Sections 10 and 14 of the *Tax Procedures Act*. As a result, the 1st Respondent is said to have accrued penalties amounting to Kshs.1,000,000.00 as prescribed under Section 81 of the *Tax Procedures Act*.
26. In response, the 1st Respondent has argued that no formal notification was ever issued to it regarding the outstanding taxes and penalties. It therefore submitted that the Applicant cannot be considered a creditor within the meaning of Section 900 of the *Companies Act*, thereby negating any obligation to serve the Applicant with a copy of the striking off application.
27. Section 900 of the *Companies Act* provides that a copy of the application under Section 897 must be given to, among others, every person who, at the time of the application, is a member, employee, or creditor of the company. The key question therefore is whether the 1st Respondent owed the Applicant at the time of making the application.
28. Whether or not the taxes claimed by the Applicant are valid is a matter to be determined through the set procedures under the *Tax Procedures Act*. However, there is a clear prima facie evidence showing that a tax obligation exists. It is not disputed that the 1st Respondent was a registered taxpayer under PIN No. P051588520L, as indicated in the Itax General Ledger. A cursory examination of the Itax General ledger submitted as exhibit VM1 shows the tax assessments were made before the application for striking off was filed. Therefore, it is evident that the tax was due creating a prima facie tax liability to the Applicant. This makes the Applicant a creditor under the meaning of section 900 of the *Companies Act*.
29. Furthermore, the 1st Respondent failed to comply with the mandatory provisions of Section 900(1) of the *Companies Act*. I do not agree with the 1st and 2nd Respondents' assertion that the burden lay with the Applicant to show cause upon publication of the Gazette notice issued under Section 897(3). This position overlooks the statutory duty placed upon the 1st Respondent to serve a copy of the application for striking off on all known creditors. Compliance with Section 900(1) is not discretionary, and failure to adhere to this requirement amounts to an offence under Section 900(4) of the *Companies Act*. The obligation to notify known creditors, such as the Applicant, cannot be shifted to the Registrar's General notice in the Gazette.
30. The above notwithstanding, Section 10 of the *Tax Procedures Act* clearly mandates that any person who ceases to be required to be registered for tax purposes must apply to the Commissioner for deregistration within 30 days of ceasing to be required to be registered. In the present case, the 2nd Respondent contends that the dissolution procedure for the 1st Respondent was duly followed, which is why the 4th Respondent, the Registrar of Companies, struck the 1st Respondent off the Register.
31. However, the 1st and 2nd Respondents have not provided any justification for non-compliance with Section 10 of the *Tax Procedures Act*, other than asserting that they were not notified of the unpaid amounts. While I acknowledge this assertion by the 1st and 2nd Respondents, it does not negate the fact that the General Ledger Report reveals that tax returns were still being filed both before and after the 1st Respondent was struck off the register. In light of this, it is evident that the 1st and 2nd Respondents failed to apply for deregistration under Section 36 of the *Value Added Tax Act*, read together with Sections 10 and 14 of the *Tax Procedures Act*, and thus accrued a penalty amounting to Kshs.1,000,000.00 as prescribed under Section 81 of the *Tax Procedures Act*.



32. In this case therefore, I draw inference from the High Court decision in Kenya Revenue Authority v Okla Holdings Limited & 2 others (Commercial Case E001 of 2024) KEHC 8090 (KLR) (20 June 2024) (Ruling), where the court, faced with similar circumstances, allowed an application for an order to restore a Company to the register of companies. I am also minded of my duty under Section 918 of the Companies Act which provides that: -

“ 918. Decision on application for restoration by the Court

- (1) On the hearing of an application made under section 927, the Court may order the company to be restored to the Register—
 - (a) if the company was struck off the Register under section 894 or 895 and the company was, at the time of the striking off, carrying on business or was in operation;
 - (b) if the company was struck off the Register under section 897 and a requirement of sections 898 to 903 was not complied with; or
 - (c)) if in any other case the Court considers it just to do so.” (Emphasis mine)

33. From the above, courts have discretion under Section 918(b) and (c) of the Companies Act to order the restoration of a company when “a requirement under section 898 to 903 is not complied with” or where it is deemed “just” to do so. In the present case, several factors weigh in favor of granting restoration. These include the fact that the application was filed within the six-year period allowed by law, the Applicant has demonstrated it is a creditor with a justifiable cause of action, the Applicant was neither notified nor served with a copy of the application filed by the 1st Respondent under Section 897(1) as required under Section 900(1) of the Companies Act; the company failed to comply with the tax deregistration provisions as outlined in the Tax Procedures Act. Thus, it is only fair and just that the company be restored as this would enable the parties to follow due process which includes addressing the taxes as alleged to be owed, as that is beyond the scope of this Court in the present proceedings.

34. In light of these considerations, it is just and equitable to grant the orders sought in the application dated 6th November 2023 for the limited purpose of addressing the tax liability. The application is therefore allowed. The 1st Respondent shall forthwith be restored to the Register of Companies to enable the parties applicant on one hand and the 1st Respondent to conclusively deal with the tax liabilities including the validity. There shall be no orders as to costs. Orders accordingly.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 25TH APRIL, 2025.

RHODA RUTTO

JUDGE

In the presence of;

.....for Applicant

.....for Respondents

Sam Court Assistant

