



**Kilindini Warehouse (K) Limited v Registrar of Companies & another (Miscellaneous Application E515 of 2025) [2025] KEHC 12468 (KLR) (Commercial and Tax) (1 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12468 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
MISCELLANEOUS APPLICATION E515 OF 2025  
JWW MONG'ARE, J  
SEPTEMBER 1, 2025**

**BETWEEN**

**KILINDINI WAREHOUSE (K) LIMITED ..... APPLICANT**

**AND**

**THE REGISTRAR OF COMPANIES ..... 1<sup>ST</sup> RESPONDENT**

**OMAR SALEH SAID ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

**Introduction and Background**

1. By an application dated 26<sup>th</sup> May 2025, the Applicant (“the Company”) seeks an order directing the 1<sup>st</sup> Respondent (“the Registrar”) to reverse all changes that were allegedly made without lawful authority and restore the shareholding and directorship to its state as of 31<sup>st</sup> March 2010. The application is supported by the affidavit of Capt. Swaleh Awadh Saleh sworn on 26<sup>th</sup> May 2025. The Company contends that at time, its shareholders were the Estate of Awadh Saleh Said with 39,999 shares, and Capt. Saleh with 1 share and that Capt. Saleh was also the Company's director. That in 2015, while a winding-up case was pending, the Registrar unlawfully altered the Company's register, which alteration removed Capt. Saleh as a shareholder and inserted the 2<sup>nd</sup> Respondent (“Omar”) as a shareholder with 1 share. The Company claims that this change was made without any share transfer documentation.
2. The Company alleges that Omar continues to interfere with its affairs by using fraudulent CR12 forms that list him as a shareholder and that this has resulted in the freezing of the Company's bank accounts and has jeopardized its relationships with stakeholders. The Company claims that despite multiple court findings declaring the changes unlawful, the Registrar has ignored demands to correct the register. The Company states that the court has jurisdiction to order the rectification of the



- company register under section 103 (1) of the *Companies Act* (Chapter 486 of the Laws of Kenya), which grants the court the power to rectify the register if a person's name is entered or omitted without sufficient cause.
3. The Company also notes that section 863 (1) of the *Companies Act* requires the Registrar to remove any entry that a court has declared to be invalid or ineffective. The Company asserts that the continued presence of Omar's name in the register is a "contemptuous defiance of court authority and an enabler of corporate fraud".
  4. In response, the Registrar has filed the Notice of Preliminary Objection dated 24<sup>th</sup> June 2025 stating that the application contravenes the provisions of Order 3 Rule 1 of the Civil Procedure Rules which stipulate that a suit may be commenced by way of Complaint, a Petition/or Originating Summons while the instant proceedings were instituted by way of Miscellaneous Application. That the application is grossly incompetent, a thorough misconception of the law, incurably defective, scandalous, frivolous, vexatious and an abuse of the Court's process and should be dismissed with costs.
  5. On his part, Omar has filed the replying affidavit sworn on 18<sup>th</sup> June 2025 and Grounds of Opposition of the same date. He also depones that the application was filed via an "Originating Notice of Motion", which is not a recognized mode of commencing a civil suit under the Rules. He states that the application involves serious allegations of fraud, disputed directorship, and shareholding, which cannot be resolved summarily through affidavit evidence alone. He gives a historical context that the Company was founded in 1981 by OSS and his two late brothers and was registered on 5<sup>th</sup> January 1982 with each brother holding 1 share. That in 1999, one of the brothers of OSS, the late Awadh Saleh Said, fraudulently altered company records where he removed OSS and another brother as directors/ shareholders, increased his own shareholding and appointed his son, Capt. Saleh, as a director.
  6. Omar contends that these changes were made without proper meetings, notices, or resolutions and that multiple cases have been filed over the years, including: Mombasa Winding Up Cause No. 1 of 2010 which was dismissed for lack of locus standi; Mombasa HCCC No. 5 of 2010 where an injunction against Omar was allowed and that the matter is pending determination before the Court of Appeal and; Milimani Criminal Case No. E226 of 2023 which was withdrawn due to accused's old age and the case is under review by the court after the complainant protested the withdrawal. Omar also states that he filed a derivative suit Mombasa HCCC No. E013 of 2025 which was dismissed but that he has lodged an appeal with the Court of Appeal.
  7. Omar avers that the Registrar has previously acknowledged errors in the Company's records and that its previous Letters confirm Omar's original shareholding and he acknowledges that the Registrar has no power to unilaterally rectify the register without a court order. As such, Omar urges the court to dismiss the application, order the restoration of the company register to its pre-1999 state and uphold his rights as a founding shareholder and director.

### **Analysis and Determination**

8. I have gone through the application, the Objection and the submissions of the parties. I propose to first deal with the Objection and determine whether the Company's application is incompetent for being instituted by way of a miscellaneous application as opposed to a "suit" which may be commenced by way of Complaint, a Petition/or Originating Summons at least going by Order 3 Rule 1 of the Rules. A "suit" is defined under section 2 of the *Civil Procedure Act*, as "all civil proceedings commenced in any manner prescribed". The understanding of this court is "prescribed" means 'prescribed by Rules' and "Rules" under the *Civil Procedure Act* means "rules and forms made by the Rules Committee to regulate the procedure of courts". I do not think it is in dispute that section 19 of the *Civil Procedure*



Act states that “every suit shall be instituted in such manner as may be prescribed by rules” and as stated, under Order 3 Rule 1 of the Rules this can be done either through a Complaint, a Petition or an Originating Summons.

9. I am in agreement with the court’s view in *Synergy Industrial Credit Limited v Mitchell Cotts Freight (K) Ltd* [2020] KEHC 1927 (KLR) that section 19 does not confine a monopoly to the Civil Procedure Rules on how a suit should be instituted. It provides that suits may be instituted in the manner prescribed by rules and in the considered view of this Court, there could be rules in other Statutes on how proceedings may be commenced. A similar view was expressed by the court in the case of *Abdi Abdullahi Somo v Ben Chikamai & 2 others* [2016] KEHC 4283 (KLR) where Gikonyo J., stated thus:

In my life as a judge, I have in the past heard similar arguments being advanced that a Notice of Motion cannot commence substantive proceedings. But, it should be understood that, as a matter of general principle, a Notice of Motion is a competent way of initiating substantive proceedings in court. It will all depend on the particular statute governing the particular proceeding in question. Therefore, where the law provides for the manner of commencing a suit or proceedings in court, then that procedure applies. For instance, proceedings for appointment of inspectors under the Companies Act are commenced by way of Notice of Motion yet they are substantive proceedings. Close to the proceedings at hand, substantive judicial review proceedings under Order 53 rule 3 of the Civil Procedure Rules are commenced by a Notice of Motion. Before I conclude on this point, I should say that the Constitution seems to seek keeping of formalities especially on applications based on denial, or violation or infringement or threatening of fundamental rights and freedoms, to barer minimum. On this please see article 22(3) (b) of the Constitution. I need not say more about this objection. It fails flat.

10. The Company’s application is anchored under inter alia section 103(1) of the Companies Act which envisages an application as follows:

103. Power of Court to rectify register

- (1) If—
- (a) the name of any person is, without sufficient cause, entered in or omitted from the register of members of a company; or
  - (b) the cessation of membership of a person who has ceased to be a member of the company has not been entered in that register, the person affected, or the company or any member of the company, may apply to the Court for rectification of the register.
- (2) On hearing an application made under subsection (1), the Court shall either refuse the application or order rectification of the register and payment by the company of any damages sustained by any party affected by the error or is failure.
- (3) On hearing such an application, the Court may—
- (a) decide any question relating to the title of a person who is a party to the application to have the person’s name entered in or omitted from the register, whether the question arises between members or alleged members, or between members or alleged members on the one hand and the company on the other hand; and;



- (b) generally decide any question that it considers should be decided in order to rectify the register.
- (4) In the case of a company required by this Act to lodge a list of its members with the Registrar, the Court, when making an order for rectification of the register, shall by its order direct notice of the rectification to be given to the Registrar, who shall on receipt of the notice make such adjustments to the Register as the Registrar considers appropriate.
11. The aforementioned provision does not expressly state that the subject application must be anchored in a suit and that it must be instituted by way of a by way of a Complaint, a Petition or an Originating Summons. In the foregoing, I cannot fault the Company for commencing these proceedings by way of an Originating Notice of Motion and this objection by the Respondents therefore fails and I now dismiss the Registrar's Preliminary Objection.
12. Turning to the substance of the application, the court is being called to determine whether the Registrar ought to be directed to rectify the Company's Register by reversing all changes in the Company to restore the lawful shareholding and directorship to the following, which position prevailed as at 31<sup>st</sup> March 2010. I have gone through the parties' arguments on the same and what comes out is that the issues being raised by Omar have been heard and determined before by the court in various matters.
13. In *Omar Saleh Said V Kilindini Warehouse (k) Limited & 2 Others* [2018] KEHC 2089 (KLR), Omar sought an order to wind up the Company on the basis that the late Awadh Saleh Said had fraudulently falsified the records and minutes of the Company with the design and sole purpose of defrauding both the legal and beneficial shareholders of the Company. It was also alleged that the late Awadh Saleh Said, as the managing director, had excluded Omar from the affairs of the Company including financial records. The alleged falsification related to the minutes and returns lodged with the Registrar which Omar alleged were not genuine nor authentic.
14. On the shareholding of Omar at the time when he brought the petition and the actions of the Registrar at the time, the court (PJO Otieno J., ) stated as follows in a judgement dated 16<sup>th</sup> November 2018:
42. Both the petitioner and the Respondents have filed two certificates of search, CR 12, issued by the Registrar, on different dates and the two do not agree on the shareholders of the company on the material dates. The two certificates are dated 24/08/2015 and 16/11/2015. An insight on that incongruence can be got from the Report prepared by James Nduna dated 8/2/2016, pursuant to an order by this court, as well as a letter dated 11/11/2015 addressed to National Police Service, Directorate of Criminal Investigation, and found at page 134 of the said report by Mr. Nduna.
43. The long and short of the two documents is that the company's structure was changed by forms 213 and 203A dated 14/01/2000 in which the two contributories of the company; the petitioner, and Hussein Swaleh Said reportedly resigned their positions as directors and shareholders of the company, the company share capital was increased from 1,000 to 40,000 and all allocated to the second Respondent and one Saleh Awadh Saleh.
44. That position is said to have persisted till 6/07/2015 when the petitioner complained to the registrar and the registrar responded to that complaint by reversing the entries made since 2000 and reverted the shareholding of the company to what it was before the forms dated 14/1/2000 were filed.



45. Of note to this court is the admission in the two documents and by the officer Mr. James Nduna that he made the report with an incomplete file as the original file had been forwarded to the Director of Criminal Investigation. (See page 4-5, Clause 4.0, of Mr. James Nduna report and 4th last paragraph of the letter dated 11/11/2015 at pages 134 – 135 of the Report filed in court on the 9/03/2016.)
46. That notwithstanding the question one must pose and be answered is on what authority did the Registrar cancel the entries made in the Register pursuant to returns made by the company. That point was argued forcefully by the Respondents and not answered by the petitioner as well as the interested party.
- .....
48. It is overly clear that the law does not allow the Registrar to rectify the Register so as to add or subtract the name of a person who ought to be added or removed therefore. It is only the court with the legal power to rectify the Register.
49. Now that the only reason the entries in the register, which had subsisted from 2000 was changed in 2015, some 15 years later, were altered is the unilateral action by the registrar, done even without hearing the company and the other persons to be affected by loss of shares, it must be determined if that was lawful or legal.
50. The law as it stood when the actions occurred, past events, clearly say that was done without mandate. If done without legal mandate, an action is null and void. If null and void it confers on nobody a legal right in as much it cannot burden anybody with a legal obligation nor can it be the basis of deprivation of property.
- .....
52. . I have said that the *companies act* did not donate to the Registrar the power to rectify the Register. He had no powers to purport to do what he did. But more importantly the actions by the Registrar seem to have been conducted, even if he had the power to so act, contrary to the rules of natural justice. The two documents alluded to above point to the fact that the registrar only acted on the petitioner’s complaint and did not seek a say from the two respondents here and even Mr. SWALEH AWADH SALEH who had been allotted a share pursuant the forms filed. By the action of the Registrar reverting to the entry at the time of incorporation, he did in fact divest the 2<sup>nd</sup> Respondent as well as the said Mr. SWALEH AWADH SALEH of their allotted shares without hearing them. That was not only in violation of the principles of natural justice but also an affront to article 40 of *the Constitution* of Kenya which guaranties rights to property. Such are the actions a court of law is entitled to set aside ex-debito justitiae.
- .....
54. It is to this court clear that in purporting to rectify the Registrar the Registrar overstepped his statutory powers and violated not only the rules of natural justice but also the rights to property. Such action cannot be made to stand but at the very least cannot be the basis to maintain a court action like this winding up cause.
55. It is also of critical note that the rectification was done while this suit was pending with the sole purpose of giving to the petitioner a pedestal to maintain the petition pursuant to Section 211 of the *Companies Act*, Cap 486.



56. It is clear to me that when the petition was filed in 2010, the petitioner was by the records at the company registry and with the company secretary not a shareholder or a member. If he was not a member he had no locus standi to bring the action and that the registrar purported to reinstate him did not add much. If he had no standing at inception, he lacked the foundation to mount the petition and such foundation could not be erected subsequently to have retrospective effect.
57. I do find that the petitioner lacked the requisite locus standi at the time of filing petition and to date continues to lack the standing. For that reason, the petition cannot be maintained but must fail. Consequently, the other issues deserve no employment of courts time to consider because if there is no valid petition then there is nothing to be considered on the merits.
15. I am in agreement with the Company that from the above decision of the court, it was noted that Omar was not a shareholder or member of the Company, the Registrar did not possess the power to rectify the Register and that the alterations to the Company's Register to reflect Omar as a shareholder was unlawful and ultra vires. Further, that the changes to the Company's Register were done while the Winding Up Cause was pending determination and it was aimed at giving Omar a pedestal to stand on to prosecute his petition. It was also noted that the Registrar deprived the late Awadh Saleh Said And Capt. Saleh of their shareholding by removing their names as shareholders of the Company without affording them a chance to be heard thereby violating not only their constitutional right to a fair hearing before altering the register but their right to property.
16. That is not all. The court (Magare J.,) in Kilindini Warehouse (k) Limited & Another V Said & Another [2024] KEHC 8967 (KLR) affirmed the court's decision in Omar SALEh Said V Kilindini Warehouse (k) Limited & 2 Others(supra) by stating that Omar still had no locus standi even in that suit, that he had not established a basis for interfering in the affairs of the Company and that there were no Court of Appeal orders changing the circumstances. The court thus found that Omar is not a shareholder or member of the Company and is not entitled to take part or interfere in the affairs and running of the Company without authority of the Company and a permanent injunction was issued against him.
17. After this judgment, the court (Ng'arng'ar J.,) then noted in a ruling dated 16<sup>th</sup> December 2024 that Omar had issued instructions to the Company's bank to halt all transactions on grounds that he was the only surviving director/shareholder of the Company. The court noted that these instructions were issued after the court's judgment which was a "blatant breach of the orders of the court..."The court further asserted that the CR12 produced by the 2<sup>nd</sup> Respondent was rejected as it was found that Omar was not a member of the Company nor a director/shareholder and that the CR 12 dated 22<sup>nd</sup> October 2024 was irregular and that the same was "illegally obtained". Undeterred, Omar filed another suit HCCOMM/E013/2025 seeking to continue it as a derivative claim and the court(Wangari J.,) asserted the court's previous findings and struck out the suit in a ruling dated 8<sup>th</sup> April, 2025.
18. I think I have said enough to make it clear that the issue of Omar's shareholding and the actions of the Registrar have already been determined by courts of concurrent jurisdiction and I cannot hold otherwise. Omar is not a member, shareholder or director of the Company and he cannot purport to be either. The alterations by the Registrar to the Company's share structure made in the year 2015 were nullified meaning that the shareholding structure ought to revert to what it was before, that is, the late Awadh Swaleh Said With 39,999 Ordinary Shares, And Swaleh Awadh Saleh with 1 ordinary share.
19. I find merit in the Company's application dated 26<sup>th</sup> May 2025 that an order for rectification of the Company's Register needs to be made to reflect this position and to finally stop Omar from



running amok and around with illegal CR 12s that are disruptive to the Company's affairs and operations.

### **Conclusion and Disposition**

20. In the foregoing, I now make the following final orders:

1. The Registrar's Notice of Preliminary Objection dated 24<sup>th</sup> June 2025 is dismissed.
2. An order be and is hereby issued directing the Registrar of Companies to, within Seven (7) days of this order, rectify the Company Register of Kilindini Warehouses (kenya) Limited (company Number C.23538) by reversing all changes in the Company Register declared to be unlawful in the Ruling delivered by the High Court at Mombasa on 16<sup>th</sup> November 2018 in Mombasa Winding Up Cause No. 1 Of 2010 – In The Matter Of Kilindini Warehouses (k) Limited and revert the shareholding and directorship of Kilindini Warehouses (kenya) Limited to the following which position prevailed as at 31<sup>st</sup> March 2010:

Shareholding

- i. Estate of Awadh Saleh Said- 39,999 shares
- ii. Swaleh Awadh Saleh- 1 share

Directorship

- i. Swaleh Awadh Saleh - Director

3. The Respondents shall bear the costs of the Preliminary Objection and the application. It is so ordered.

**DATED SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 1<sup>ST</sup> DAY OF SEPTEMBER 2025**

**J.W.W. MONGARE**

**JUDGE**

In The Presence Of

Mr. Abdulahi holding brief for Mr. Sugow for the Plaintiff.

Ms. Juma holding brief for Ms. Nzamsa for the 2<sup>nd</sup> Defendant.

Amos- Court Assistant

