



**Gitonga & 13 others v Michii Mikuru Tea Company Ltd (Sued through its Board of Management); Kenya Tea Development Authority (Interested Party) (Miscellaneous Civil Application E105 of 2024) [2024] KEHC 15129 (KLR) (28 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 15129 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
MISCELLANEOUS CIVIL APPLICATION E105 OF 2024  
HM NYAGA, J  
NOVEMBER 28, 2024**

**BETWEEN**

**GEORGE GITONGA & 13 OTHERS ..... APPLICANT**

**AND**

**MICHII MIKURU TEA COMPANY LTD (SUED THROUGH ITS BOARD OF MANAGEMENT) ..... RESPONDENT**

**AND**

**KENYA TEA DEVELOPMENT AUTHORITY ..... INTERESTED PARTY**

**RULING**

1. By an Application dated 16<sup>th</sup> September, 2024 the Applicants moved the court seeking the following prayers:-
  - i. That the application be certified as urgent and the same be heard ex-parte in the first instance.
  - ii. That pending the hearing of this application, the Honourable Court be pleased to issue an order barring any of the directors of the Respondent from authorizing, transacting, signing or releasing tea bonuses to the members comprised in the six (6) zones of Michii Mikuru Tea Development Company pending the Special General Meeting slated for the 27<sup>th</sup> day of September, 2024.
  - iii. That pending the Special General Meeting, slated for the 27<sup>th</sup> day of September, 2024 for the members/farmers of Michii Mikuru Tea Development Company the Honourable Court be pleased to issue an order barring the Interested Party herein from releasing for payment monies owing to members of Michii Mikuru Tea Company Ltd to the Respondent herein.



- iv. That pending the Special General Meeting slated for the 27<sup>th</sup> day of September 2024 for the members/farmers of Michii Mikuru Tea Development Company the Honourable Court be pleased to issue an order barring the directors of Michii Mikuru Tea Development Company Ltd from transacting any business for and on behalf of Michii Mikuru Tea Development Company Ltd.
2. The Application is propped by the grounds set out on its face and is supported by the joint affidavit Richard Benjamin and Ronny Murithi.
3. In a nutshell, the Applicant's case is that they are members of the Respondent and are representing thousands of fellow members.
4. The Applicants aver that the Respondent, contrary to the Articles of Association, failed to hold an AGM for the last financial year but only held a meeting to introduce the new directors elected in the month of June 2024.
5. It is further averred that members are not satisfied with the manner in which the Respondent was handling their produce (tea) and especially the prices and the production costs stated by the Respondent. They cited cases where the Respondent declared rates payable to its members was to the tune of Kshs. 35/- which the members were not comfortable with.
6. The Applicants further averred that agitated by the turn of events, they sought to hold a special annual general meeting in order to address their issues. That the management of the Respondent has embarked on felling of indigenous trees and uprooting of tea to bushes growing in the company's estates without consent of the members.
7. It is thus their prayer that the orders be granted pending the special general meeting slated for 27<sup>th</sup> September, 2024.
8. In response to the Application, the Respondent filed a replying affidavit sworn by one Stephen Kithinji, the chairperson of the Board of Directors.
9. In a nutshell, it is averred that contrary to the assertions by the Applicants, the calculation of the tea busser is a scientific and accounting outcome arrived at after taking into account many factors including the prevailing prices and the attendant production and distribution costs.
10. The Respondent further states that contrary to the assertions by the Applicants, the Respondent held its Annual General Meeting on 28<sup>th</sup> November, 2023 and a special general meeting on 15<sup>th</sup> July, 2024.
11. It is further stated that the purported special/general meeting scheduled for 27<sup>th</sup> September, 2024 was irregular as it did not meet the threshold set for the calling of a special /general meeting.
12. Regarding the alleged destruction of trees and tea bushes, the Respondent avers that the issue is under investigation by the relevant state agencies.
13. The Respondent also state that all the board of director's activities have been above board and if any query arises, there is an internal mechanism to address such issues.
14. The Applicants filed a supplementary affidavit to address the assertions by the Respondent. They state that the explanation for low tea bonuses to the farmers was not acceptable and that the Respondents formula in arriving at the same is opaque and unknown to the members.
15. The Applicants further states that the alleged annual meeting did not take place and that the same is a creation by the directors of the Respondent to conceal their misdeeds.



16. When the matter came up for directions on 17<sup>th</sup> September, 2024 my brother Justice Linus P. Kasson ordered that the status quo be maintained.
17. While the 1<sup>st</sup> application was pending, the applicants filed another application dated 17<sup>th</sup> October 2024, which sought the following orders:-
  - i. That the application be certified as urgent and the same be heard ex-parte in the first instance.
  - ii. That pending the hearing of this application, the Honourable Court be pleased to issue an order of injunction barring any of the directors of the Respondent, their agents and/or assigns from authorizing, transacting or in any way dealing with the affairs of the Respondent.
  - iii. That pending the hearing and determination of this application the Honourable Court be pleased to issue an order allowing the casual directors of the Respondent to run the affairs of the Respondent as envisaged in the Resolution of the Special General meeting held on the 27<sup>th</sup> day of September, 2024 in place of the current directors.
  - iv. That pending the hearing and determination of this application the Honourable Court be pleased to issue an order of injunction barring the interested party from conducting the elections for tea buying centre committees for the all the tea buying centres of the Respondent slated for the 24<sup>th</sup> day of October, 2024.
18. After considering the said application, I directed that since similar issues were raised with a few changes, the 2 application would be argued together.
19. In the 2<sup>nd</sup> application, the Applicant's case was that they wanted the six casual directors to run the affairs of the company/Respondent as had been resolved in the special general meeting of 27<sup>th</sup> September 2024.
20. The Applicants further avers that the Special General meeting resolved that a forensic audit of the Respondent as there was underspend pilferage of resources, stalling of new projects. That farmers had resolved not to deliver tea to the Respondents which would be detrimental to the economy.
21. In respect to the interested party, the Applicants stated that it had announced the objections of tea bringing centres committees which to them was a scheme to silence the farmers.
22. In response to the said application, the Respondent, through the chairperson's affidavit, averred that the purported special general meeting was invalid and illegal. They termed the 2<sup>nd</sup> application by the Applicants as an attempt to secure orders sought in their first application through the back door.
23. The Respondent further stated that the elections for the tea buying centres committees were in accordance with the election cycle, and are sovereign paid exercised by members.
24. The Respondent points out that there is Constitution Petition No. E008 of 2024 pending before this court that challenged the elections of the board of directors and that some of the Applicants were in the said suit.
25. The parties filed submissions that I have considered and will not rehash them. It suffices to state that I will where necessary refer to them.
26. The Applicants sought orders of injunction, so the first question is whether they have met the threshold for an injunction as set in the well known case of *Giella v Cassman Brown* (1973) EA 358 and reiterated in *Ngumuma Ltd v Bonde Niesen and 2 Others* (2014) eKLR.



27. It must be noted that this matter was filed as a miscellaneous Application. There is no suit so that any orders granted will determine the entire suit. The Applicants moved the court under Section 7 of the Arbitration Act, which provides as follows:-
7. Interim measures by court
    - (1) It is not incompatible with an arbitration agreement for a party to request from the High Court, before or during arbitral proceedings, an interim measure of protection and for the High Court to grant that measure.
    - (2) Where a party applies to the High Court for an injunction or other interim order and the arbitral tribunal has already ruled on any matter relevant to the application, the High Court shall treat the ruling or any finding of fact made in the course of the ruling as conclusive for the purposes of the application.
28. The applicants have not stated that they have come to court for relief seeking interim orders pending arbitration. They sought orders pending the intended special general meeting.
29. The Respondent submits that the application as drawn is barren and has been overtaken by events.
30. On the above, I agree with the Respondent. The orders sought were that pending the Special General Meeting slated for 27<sup>th</sup> September, 2024, injunction orders do issue. The meeting, according to the Applicants in their second application, took place on 27<sup>th</sup> September, 2024.
31. Since the event envisaged in the first application has taken place, the same has now been overtaken by events, hence the application dated 16/09/2024 is spent.
32. The 2<sup>nd</sup> Application was hinged upon the first application and cannot by itself institute a new cause of action.
33. Therefore, the prayer for the installation of a casual directors elected during the event that was envisaged in the first application, is a totally new cause of action without seeking to amend the originating motion that convinced these proceedings. My view is that this cannot be allowed to continue. There is need to have the Respondent aware of the entire matter before it, and the introduction of new issues, pegged upon an application that is already spent, is untenable.
34. The Respondent has also raised the issue of sub-judice claiming that there is already a pending previous suit, Petition NO. E008 of 2024 that challenges the election of the directors. It is argued that a grant of the orders will cause confusion and absurdity with the potential for conflicting decisions.
35. The principle of sub-judice is set out in Section 6 of the Civil Procedure Act which provides as follows;
- ‘No Court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other Court having jurisdiction in Kenya to grant the relief claimed.’
36. In Republic v Registrar of Societies - Kenya & 2 Others Ex-Parte Moses Kirima & 2 Others [2017] eKLR the court expounded on the said principle and held that:
- “...Therefore for the principle to apply certain conditions precedent must be shown to exist: First, the matter in issue in the subsequent suit must also be directly and substantially in issue in the previously instituted suit; proceedings must be between the same parties, or between



parties under whom they or any of them claim, litigating under the same title; and such suit or proceeding must pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed...”

37. In the Petition, the Petitioner were seeking a declaration that the elections of the Directors of the Respondent be declared null and void and fresh elections be conducted.
38. It matters not that the previous suit and the subsequent one(s) is commenced in a different manner, and in this case what matters are the issues to be determined by the court.
39. Looking at the present application, they challenge the validity of the elections of the Board of Directors of the Respondent. They are stating that the same were never held. The same issue was addressed in the Petition. I am thus of the view that this matter is sub-judice Petition No. E008 of 2024.
40. Ordinarily, once a court finds that a subsequent suit is sub judice, the said subsequent suit is to be staged. In the instant case, I have already found that the application dated 10/09/2024 was spent and so cannot be stayed. For the 2<sup>nd</sup> application, I find that it is founded on the same issues as the first application which is spent.
41. In conclusion, I find the applications to have been overtaken by events. Being a matter involving farmer’s membership in the respondent, I make no orders as to costs.
42. Having stated the above, I need to add one other issue. The Respondent is a limited liability company. The Companies Act, by virtue of Section 239, provides for a derivative action/claim by a member of the company. If the Applicants, with others feel that they would want to move under that section, they ought to do so, but be mindful of the petition already pending in court.

**H.M. NYAGA**

**JUDGE**

**SIGNED, DATED AND DELIVERED AT MERU THIS 28<sup>TH</sup> DAY OF NOVEMBER 2024.**

**H. M. NYAGA**

**JUDGE**

In the presence of :-

