



REPUBLIC OF KENYA



**Muchina & 2 others v Mathenge & 4 others (Civil Case
E030 of 2022) [2023] KEHC 3584 (KLR) (25 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 3584 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL CASE E030 OF 2022
PM MULWA, J
APRIL 25, 2023**

BETWEEN

**PAULINE WANGARI MUCHINA 1ST PLAINTIFF
ANTHONY MWAURA WAWERU 2ND PLAINTIFF
DAVID MBUGUA NDICHU 3RD PLAINTIFF**

AND

**THUO MATHENGE 1ST DEFENDANT
JOSEPH KIMANI KAGETHE 2ND DEFENDANT
RAPHAEL MUCHIRI NDUATI 3RD DEFENDANT
MBOI KAMITI FARMERS COMPANY LIMITED 4TH DEFENDANT
REGISTRAR OF COMAPANIES 5TH DEFENDANT**

RULING

1. The appellants' Notice of Motion dated 14th April, 2023 is brought pursuant to Section 1A, 1B and 3B of the [Civil Procedure Act](#), Order 51 of the [Civil Procedure Rules](#) and Section 78(2) of the [Land Registration Act](#) No 3 of 2012 and seeks the following orders: -
 - i. Spent.
 - ii. The court be pleased to stay, postpone and/or cancel the Annual General Meeting for Mboi Kamiti Farmers Company Limited slated for 27th April 2020.
 - iii. The cost of the application be in the cause.
2. The application is premised on the grounds on the face of it and more particularly in the supporting affidavit of David Mbugua Ndichu (the 3rd Applicant). He averred that the 1st respondent herein has



in complete contempt of the court orders advertised a notice for Annual General Meeting of the 4th Respondent on 27th April 2022, where the expected outcome is a complete change of the status quo which the court herein directed be maintained.

3. The 1st and 4th Respondents opposed the application and filed a Replying Affidavits sworn by Thuo Mathenge on 24th April 2023. It was contented that the holding of the AGM as scheduled on 27th April 2023 is not only in compliance with Section 275(A) of the [Companies Act](#), but also in line with the wishes of plaintiffs who are members of the 4th Respondent company and entitled to vote. And that the status quo order did not halt the normal operations of the 4th Respondent.
4. Ms. Kibebo for the Applicants submitted that the holding of the AGM on 27th April 2023 would be in contempt of the order of the court which directed that status quo be maintained. She urged the court to stay, postpone, and or cancel the holding of the AGM. It was further submitted that the issue of statutory timelines cannot arise when there exist contentious issues yet to be addressed before the court, including verification of membership.
5. Mr. Mutiso for the 1st and 4th Respondents submitted that it is the plaintiffs/applicants who when they filed the suit prayed that the 4th Defendant/Respondent be compelled to hold an Annual General Meeting, and that what the company was doing was simply complying with statutory requirements.
6. I have considered the application, the averments in the filed affidavits as well as the oral representations by both learned counsel Ms. Kibebo for the Applicants and Mr. Mutiso for the 1st and 4th Respondents.
7. The main issue for determination is whether the 1st Respondent is in contempt of the court orders of status quo by the fact of calling an AGM of the 4th Respondent and further whether the court should stay, postpone and or cancel the Annual General Meeting slated for 27th April, 2023.
8. A brief background of the suit herein will suffice. On 13th December 2022, the Plaintiffs/Applicants filed a Notice of Motion dated 9th December 2022 seeking various temporary injunction orders against the Defendant/Respondents. They contented that one of the reasons necessitating the suit was that the 4th Defendant had not held an Annual General Meeting for more than 12 years.
9. On 14th December 2022 the court was moved to order for the maintenance of the status quo until further directions. Thereafter, the orders for maintenance of status quo have been extended to date.
10. It is those orders the Applicants contend the Respondents have disregarded by the fact of calling an AGM in respect of the 4th Respondent company.
11. The purpose of orders for *status quo* is to safeguard an obtaining situation. The [Black's Law Dictionary](#), Butterworths 9th Edition define status quo as a latin word which means "the situation as it exists."
12. The meaning of the word *status quo* was clarified by the Court of Appeal in the case [Shimmers Plaza Limited v National Bank of Kenya Limited](#) [2015] eKLR as follows:

"Status quo" in normal English parlance means the present situation, the way things stand as at the time the order is made, the existing state of things. It cannot therefore relate to the past or future occurrences or events. We fail to see what can be ambiguous about that order. All it meant was that everything was to remain as it was as at the time that order was given. If there was any transaction of whatever nature that was going on in respect of the land in question, it had to freeze and await the discharging of the Court order."



13. It is evident that the issue to hold or not to hold an AGM by the 4th Respondent is a matter to be addressed at the hearing of the suit herein. Yet one has now been called and advertised for 27th April 2027, and one of the Agendas is election of directors.
14. The main essence of such an Annual General Meeting will no doubt change the status quo of the 4th Respondent company and eventually render the suit herein superfluous.
15. The order for maintain status quo in the instant case was known to all parties. Indeed, the current jurisprudence only requires parties' advocates to be aware of such court orders for purposes of applications for contempt.
16. The upshot is that I find that the Notice of Motion application dated 14th April, 2023 has merit and order that the Annual General Meeting for Mboi Kamiti Farmers Company Limited slated for 27th April, 2023 be and is hereby stayed until further directions by the court.

Orders accordingly.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 25TH DAY OF APRIL, 2023

.....

P.M. MULWA

JUDGE

In the presence of:

Court Assistants: Mr. Kinyua/Duale

For Applicants: Ms. Kibebo

For 1st and 4th Respondents: Mr. Mutiso

