



Kirobon Farmers Co Ltd & 6 others v Kandie & 6 others (Civil Case E016 of 2021) [2023] KEHC 21028 (KLR) (27 July 2023) (Ruling)

Neutral citation: [2023] KEHC 21028 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CIVIL CASE E016 OF 2021
HK CHEMITEI, J
JULY 27, 2023**

BETWEEN

KIROBON FARMERS CO LTD & 6 OTHERS PLAINTIFF

AND

DANIEL KANDIE & 6 OTHERS DEFENDANT

RULING

1. The notice of motion by the applicants dated June 15, 2023 prays for the following orders;
 - (a) That the court directs that the only shareholders /members that shall be allowed to participate in the Annual General Meeting of August 18, 2023 are those members that are valid and recognised in the list filed with the Registrar of Companies and confirmed as such by him.
 - (b) That the court directs that the list to be used in the AGM is the list of members that was in use and was validly and legally recognised by the Registrar of Companies as at the time of filing this suit by the plaintiff /respondents herein.
 - (c) That in the alternative, an order do issue suspending the AGM for August 18, 2023 until the question of membership is properly determined.
2. The application is based on the grounds thereof as well as the sworn affidavit of Daniel Kandie sworn on even date who has deponed on his own behalf as a shareholder of the respondent and that of his applicants.
3. The gist of the application has contained in the supporting affidavit is to do with the list of the shareholders to be relied on August 18, 2023 when the company shall be holding its general meeting. It is noted that this AGM has been postponed severally because of Covid restriction despite the earlier directives of this court.



4. It is the applicant's case that the respondent has inflated the number of shareholders from 218 and added another 382 which is violation of the Companies Act 2015. He said that the added list includes cronies of the plaintiffs and that they intend to carry the day during the AGM.
5. Consequently, they are praying that the list be streamlined before that day or alternatively the AGM be postponed.
6. Samuel K Birir on behalf of the respondent opposed the application vide his affidavit dated July 17, 2023. He denied the applicants averments and stated inter alia that there is no way the shareholders can be inflated by mere letters. He went on to aver that there were two groups namely those from Keringet who were the majority and Ngata who were few. All those were genuine members and each had their respective share certificates which will be used for identification.
7. He urges the court not to allow the application since the meeting has been long overdue and that in any case the Registrar of Companies will be presiding over the AGM and he knows all the legal parameters.
8. This court is not a stranger to this matter. The court issued directive sometimes on 5th July 2021 to the parties to hold its AGM. The same was however thwarted by Covid 19 pandemic. The parties have now decided to hold it on August 18, 2023. I have seen the relevant notices and correspondences between the respondent and the Registrar of Companies.
9. I think the concerns by the applicants can well be addressed by the Registrar of Companies who shall chair and or oversee the AGM. He is experienced enough to know that it is only the shareholders who have properly identified themselves that are allowed to participate in the meeting. Any other non-member or non-shareholder is precluded by law and in particular the Companies Act.
10. In the premises I do not find the application meritorious. The directives contained in the earlier rulings by this court still stands and it is expected that the parties shall adhere to them and especially the provisions of the Companies Act which guides such important AGM.
11. It is also important to add that litigation must be minimised if the plaintiff is to achieve its aspiration. There have been countless applications pitting the parties herein. The annexures to the application clearly show that most of the original founders and shareholders have long passed on. The parties must be serious and truthful especially the elected officials. They should not allow parochial differences to cloud the long-term interest of the company.
12. The application is dismissed with no order on costs.

DATED SIGNED AND DELIVERED AT NAKURU VIA VIDEO LINK THIS 27TH DAY OF JULY 2023.

H K CHEMITEI

JUDGE

