



REPUBLIC OF KENYA



**Njenga & 3 others v Kamunge & 3 others (Civil Case E001 of 2022)
[2023] KEHC 27396 (KLR) (29 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 27396 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL CASE E001 OF 2022
DO CHEPKWONY, J
SEPTEMBER 29, 2023**

BETWEEN

**STEPHEN KIARIE NJENGA 1ST PLAINTIFF
MICHAEL KAMONYE 2ND PLAINTIFF
RICHARD NJAU 3RD PLAINTIFF
EPHANTUS GACHUI 4TH PLAINTIFF**

AND

**ISAAC NJENGA KAMUNGE 1ST DEFENDANT
FERDINAND MUCHOMBA 2ND DEFENDANT
LAND REGISTRAR, NAROK 3RD DEFENDANT
REGISTRAR OF COMPANIES 4TH DEFENDANT**

RULING

1. The matter before the court is the Notice of Motion Application dated 4th January, 2022 having been filed under Sections 1A, 1B, 3A and 80 all of the *Civil Procedure Act*, Cap 21, Section 93, 104, 105, 132, 780, 782 and 1004 all of the *Companies Act* 2015, rule 15 16 and 17 all of the *High Court Organization and Administration) (general) Rules*, 2016 and Article 40 of the *Constitution of Kenya* together with all other enabling provisions of the Law.
2. The Application seeks the following orders:
 - a. Spent.
 - b. Spent.
 - c. Spent.



- d. That the court be pleased to grant an injunction against the 1st Defendant/Respondent by himself, his agents and or servants or anyone acting on his behalf from interfering, taking over management and/or purporting to act as a director of Mukuyuini Farmers Company Limited “ the Company” pending the hearing and determination of this suit.
 - e. That the court be pleased to grant an injunction against the 3rd, 4th and 5th Defendant/ Respondent by themselves, their employees/ agents and or servants or anyone acting on their behalf from registering any transfers on assets, changing official records and or interfering with the affairs of Mukuyuini Farmers Company Limited pending the hearing and determination of this suit.
 - f. That the court does regulate conduct of the affairs of the Mukuyuini Farmers in the future as it deems fit.
 - g. That the court does grant leave to the Applicants to prosecute the current suit for themselves and on behalf of Mukuyuini Farmers Company Limited.
 - h. That the 1st Defendant/Respondent be ordered to close the purported Mukuyuini Farmers Company Limited Offices at Ruiru and handover all the Mukuyuini Farmers Company documents and records including, and not limited to title deeds of the property held by he said company at Narok, to court or a neutral party appointed by court for that purpose pending the hearing and determination of the suit.
 - i. That the OCS Karuri Police Station or any police station with the requisite jurisdiction does enforce compliance with these orders.
 - j. That the costs be borne by the Respondents.
3. The Application is based on the Supporting Affidavit of Stephen Kiarie Njenga sworn on his own behalf and that of the other three Applicants on 4th January, 2021 and the following grounds:-
- a. The Defendants/Respondents have been interfering with the affairs of the Mukuyuini Farmers Company Limited (the said company) without the consent and involvement of the members of the said company.
 - b. The 1st Defendant/Respondent has self-imposed himself as a director of the and 3rd Mukuyuini Farmers Company Limited and has started to dispose of the 2nd and 3rd Defendant/Respondent despite the fact that he is not a member of the Mukuyuini Farmers Company Limited
 - c. The 4th Respondent has not been able to regulate the affairs of the Mukuyuini Farmers Company Limited and as such there is no updated record of the current directors of the Company.
 - d. The Mukuyuini Farmers Company Limited albeit registered as a private Limited company is non-compliant with Section 9(a) of the Companies Act No. 17 of 2015 Laws of Kenya in that it has more than 50 members, it does not prohibit invitation to public to subscribe for shares and does not require consent of all members to add a new member.
 - e. The Applicants were appointed as directors of the suit company at the suit company's AGM held at Karuri Catholic Hall on 17th February, 2021 but the Respondents have colluded to not have them practice as such.



- f. Time has therefore not started running for the term of the Applicants as directors of the suit company and to bring the company's status into compliance with the Companies Act No. 17 of 2015 Laws of Kenya.
 - g. It is meek and just that the current application be certified urgent and interim orders issued to preserve the assets and status of the company pending hearing and determination of the issues on merit.
 - h. This Application has been made diligently without unreasonable delay.
 - i. It is meek and just that the orders be granted as prayed.
4. The 1st Respondent filed Replying Affidavit on 24th March, 2022 wherein he states that he has been a member of the Company since 2000. He then holds that the Plaintiffs are previous Directors of the Company and that they sold the sole assets of the company being L.R. No. Cismara/ Ololunga/157 & 198 to third parties.
 5. The 1st Respondent highlighted several issues such as there being other suits which have been filed by the Plaintiff on the matter both before the Lower Court and the High Court and a judicial review application filed both in Kiambu and Nairobi, and therefore this application is an abuse of the court process.
 6. The 2nd Respondent filed his Replying Affidavit on 30th June, 2022 and he raises issues to do with the Plaintiffs lacking the locus standi to file the suit since the 1st and 3rd Applicants are former Directors of the Company; there are several other pending suits being Nairobi HCC No. 620 of 2007, Nairobi Misc Appn No. 354 of 2006, Milimani CMCC No. 449 of 2009 and Kiambu CMCC No. 230 of 2019. He holds that the application is an abuse of the court process and it should be dismissed.
 7. The court directed the application to be disposed off by way of written submissions which have been considered by the court.
 8. According to the Respondents, the Applicants do not have capacity to file the suit since they are not Directors of the Company but former Directors and that the 2nd Applicant is a non-member of the Company.
 9. Further the Respondents argue that the Company itself has not been enjoined as a party in the suit or even as an Interested Party so that all issues can be addressed therein.
 10. Having read through the affidavits in support and in rebuttal of the application dated 4th January, 2022 alongside the submissions filed by either party in support of their cases, the court find the main issues for determination before delving into the merits of the application are:-
 - a. whether the Applicants in the case have locus standi; and,
 - b. whether the Defendants are necessary parties in the suit.
 11. Having read through all the pleadings and submissions by counsel for the parties, the court agrees with the issues that have been raised by the Respondent particularly, that the Company itself ought to have been enjoined in the suit so that all the issues concerning the Company and its memberships can be addressed. It is trite a court has discretion to suo moto order for the all parties who are found necessary in the suit to be enjoined. On this, the court has placed reliance on the case of Zephir Holdings Ltd -



vs- Mimosa Plantations Ltd, Jeremiah Maztagaro and Ezekiel Misango Mutisya (2014) eKLR, where it was held that:-

“ A proper party is one who is impleaded in the suit and qualifies the thresholds of a plaintiff or defendant under Order 1 rule 1 and 2 respectively, or as a third party or as an interested party and whose presence is necessary or relevant for the determination of the real matter in dispute or to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit. And the court has a wide discretion to even order suo moto for a party to be impleaded whose presence may be necessary to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit. Accordingly, a suit cannot be defeated for mis-joinder or non-joinder of parties.”

12. In view of the above-cited decision and the circumstances, this court directs that the Applicants moves the court to have the Company enjoined as either a third party or as an Interested Party so that the court can adjudicate on and determine all the issues that are embedded in the suit. Although, the application cannot be defeated for a misjoinder or non-joinder, it will be prudent for all the necessary parties to be enjoined to deal with all the issues.

13. In the circumstances, the application to be fixed for mention for parties to take directions on the application.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 29TH DAY OF SEPTEMBER, 2023.

D. O. CHEPKWONY

JUDGE

In the presence of:

No appearance for and by either party

Court Assistant - Martin

