



Rutoo & 2 others v Board of Directors Momul Tea Factory Company Limited; Momul Tea Factory Company Limited (Interested Party) (Civil Case E008 of 2023) [2023] KEHC 26726 (KLR) (20 December 2023) (Ruling)

Neutral citation: [2023] KEHC 26726 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CIVIL CASE E008 OF 2023
JK SERGON, J
DECEMBER 20, 2023**

BETWEEN

**GEOFFREY RUTOO 1ST PETITIONER
NGENO RAYMOND 2ND PETITIONER
GIDEON LANG'AT 3RD PETITIONER**

AND

THE BOARD OF DIRECTORS MOMUL TEA FACTORY COMPANY LIMITED RESPONDENT

AND

MOMUL TEA FACTORY COMPANY LIMITED INTERESTED PARTY

RULING

1. The subject matter of this ruling is the motion dated December 19, 2023 taken out by Geoffrey Rutto, Ngeno Raymond and Gideon Lang'at, being the 1st, 2nd and 3rd Petitioners/Applicant respectively. In the aforesaid application, the applicants sought for inter alia
 - i. This Application be certified urgent and be heard and determined ex-parte at the first instance
 - ii. Pending the hearing and determination of this application, a prohibitory injunction do issue restraining the Respondents whether by themselves, their agents, assigns or any other person acting on their instructions from carrying out the special Business on 21/12/2023 for adopting the proposed Articles of Association to replace the current Interested Party's Articles of association as per the Notice issued dated 7/11/2023.



- iii. Pending the hearing and determination of the Petition herein, a prohibitory injunction do issue restraining the Respondents whether by themselves, their agents, assigns or any other person acting on their instructions from carrying out the Special Business on 21/12/2023 for adopting the Proposed Articles of Association to replace the current Interested Party's Articles of Association as per the Notice issued dated 7/11/2023.
 - iv. The Court be at Liberty to make such further orders as it deems fit.
 - v. The costs be provided for.
2. The Applicants filed in support of the Application an Affidavit deponed by Geoffrey Rutto.
 3. The Board of directors Momul Tea Factory Company Limited and Momul Tea Factory Company Limited, The Respondent and Interested Party respectively opposed the motion by relying on the Replying Affidavit sworn by Isaiah Kipkoech Langat. In response to the replying Affidavit, the applicants filed a further Affidavit Title 'Supporting Affidavit' sworn by Geoffrey Rutto. The deponent basically reiterated that he was served with the Notice dated 7th November, 2023 plus the booklet containing the Proposed Amendments on 15th December, 2023.
 4. The Deponent further averred that if the Respondent is not restrained from holding the Annual General Meeting and amending the Articles of Association, the Shareholders will not have a chance to interrogate the Proposed Articles of Association before adopting the same.
 5. It is the submission of Mr. Sang, Learned Advocate for the Applicants that the Respondent un-procedurally issued a Notice to hold an Annual General Meeting to shareholders on 21st December, 2023 to Inter alia pass a resolution to adopt a draft recommended Articles of Association to replace the current Interested Party's Articles of Association.
 6. It is pointed out that though the Notice is dated 7th November, 2023, the proposed Articles of Association was only made available at the Interested Party's Tea Buying Centres for the Interested Party's Shareholders to collect on 15/12/2023, a period of less than a week to the Annual General Meeting.
 7. The Learned Advocate argued that the manner in which the Notice has been issued for the proposed Amendments to the Interested Party's Articles of Association is oppressive and prejudicial to the applicants and other shareholders as the Respondent did not give the members adequate information as would enable them to prepare and participate effectively at the Annual General Meeting and to make informed decisions.
 8. Mr. Sang further argued that as of today, some of the Interested Party's Shareholders are not aware that the proposed Articles of Association has been made available at the various Tea Buying Centres hence they are not aware of the contents of the Proposed Articles of Association.
 9. It is the averment of the applicants that most of the Interested Party's Shareholders are illiterate farmers who can only read and understand Kiswahili Language better than English, therefore there is need to have the Proposed Articles of Association translated into Kiswahili Language.
 10. It was also pointed out that there is need to first sensitize the Shareholders on the contents of the Articles of Association. The Applicants further argued that the Proposed Articles of association has introduced significant changes which ought to be clearly understood by the shareholders
 11. In response to the applicant's submissions, Mr. Koech, Learned Advocate for the Respondent and Interested Party, urged this Court to dismiss the Applicant's motion. It is his argument that the



- application was maliciously filed with the sole intention of having the Annual General Meeting of 21/12/2023 scuttled. The Learned Advocate pointed out that the Shareholders were given sufficient Notice of 40 days to the AGM which is way beyond the 21 days prescribed under section 281 of the *Companies Act*.
12. The Respondent further stated that the Applicants still have a chance of seeking for an extension of time to interrogate the Proposed Articles of Association at the AGM. The Respondent also stated that the Proposed Articles of Association were contained in the Interested Party's Annual Report and Financial Statements supplied to the Shareholders including the Applicants on 29th November, 2023.
 13. The Respondent filed and relied on Affidavits sworn by some Shareholders namely:- Moses Limo, Kibet Charles Koech, Charles Kipkemoi Koech and John Kipyegon Cheruiyot where the aforesaid deponents stated that they received the booklets on 29th November, 2023 from their respective Tea Buying Centres.
 14. The Respondent also urged this Court to find that the instant Petition and Motion were filed after an inordinate delay on the part of the Applicants.
 15. After a careful consideration of the material placed before this Court and the rival submissions of Learned Counsel, I have come to the following conclusions in this matter.
 16. First, it is apparent that the Applicants were served with the Notice dated 7th November, 2023 for the Annual General Meeting scheduled to be held on 21/12/2023. The applicants therefore had sufficient Notice required under section 281 of the *Companies Act*.
 17. Secondly, I am further convinced that the Applicants and most of the Shareholders were supplied with the Proposed Articles of Association on or about 29th November, 2023 through their respective Tea Buying Centres. The applicants therefore had reasonable time to interrogate the proposed Articles of Association.
 18. I am persuaded by the argument put forward by the Respondent that if the applicants require more time to interrogate the aforesaid document, they can as well seek for extension of such a time at the Annual General Meeting. In other words, the Applicants still have a chance to have their concerns addressed at the Annual General Meeting instead of seeking to halt the Annual General Meeting because of only one item.
 19. Thirdly, having come to the conclusion that the applicants had sufficient Notice of the Annual General Meeting and the Agendas of the meeting, I find that they approached the Court too late in the day. In other words, the applicants delay to file the instant action and application is inordinate.
 20. The Respondent, I suppose, expended huge amount of resources and man-power to organize the Annual General Meeting. If the Orders sought are granted, it will occasion undue prejudice to the Respondent and shareholders.
 21. Finally, the Applicants have specifically complained that the Proposed Articles of Association was not written in Kiswahili a Language they are conversant better than English. I find the Proposal to be plausible. However, the issue can still be raised at the Annual General Meeting and discussed and subjected to a vote. There is no mention as to whether the old Articles of Association were in which Language. This ground or argument is not sufficient enough for the Court to issue the Orders sought.
 22. On the basis of the above findings, I have come to the conclusion that the Applicants' motion lacks merit. The same is dismissed. A fair order on costs is for each party to bear their own costs.

DATED, SIGNED AND DELIVERED AT KERICHO THIS 20TH DECEMBER, 2023



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J. K. SERGON

JUDGE

In the Presence of:-

Sang for the applicant

Koech for the Respondent

