



REPUBLIC OF KENYA



KENYA LAW
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**Kirobon Farmers Co. Ltd v Kandie & 6 others (Civil Case
E016 of 2021) [2022] KEHC 10442 (KLR) (23 June 2022) (Ruling)**

Neutral citation: [2022] KEHC 10442 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CIVIL CASE E016 OF 2021
HK CHEMITEI, J
JUNE 23, 2022**

BETWEEN

KIROBON FARMERS CO. LTD PLAINTIFF

AND

DANIEL KANDIE 1ST DEFENDANT

CHRISTOPHER KOMEN 2ND DEFENDANT

PATRICK CHEPKWONY 3RD DEFENDANT

SUSAN RONO 4TH DEFENDANT

SIGILAI CHERUIYOT 5TH DEFENDANT

BETTY TOO 6TH DEFENDANT

STANLEY CHEMNGOREM 7TH DEFENDANT

RULING

1. The Notice of Motion by the applicant dated 24th March 2020 prays for the following reliefs;
 1. Spent.
 2. Spent.
 3. Spent.
 4. Spent.
 5. Spent.



1. That a declaration that the resolutions passed in the purported Annual General Meeting of Kirobon Farmers Co. Ltd held on the 29th December 2021 are null and void.
 2. That this Honorable Court issues an order of certiorari to quash the resolutions and the recommendations that emanated from the purported Annual General Meeting of Kirobon Farmers Co. Ltd held on the 29th December 2021 which was organized by the Plaintiff /Respondent herein in utter contravention of the law and the orders issued by Hon. H.K Chemitei on the 16th Day July 2021.
 3. That an order be and is hereby issued, prohibiting the Plaintiff /Respondents, his agents, staff or any other person from conducting an Annual General Meeting of Kirobon Farmers using nonmembers or any other purported list apart from the 211 members/shareholders confirmed by the Registrar of Companies.
 4. That the Kirobon Farmers Company Limited Annual General meeting be held at the D.O.'s District Officers office in Ngata as has been petitioned and requisitioned by Shareholders/members of the Company.
 5. That the OCS Menengai Police Station preside and supervise over the Annual General Meeting of Kirobon Farmers to be held as per this court's directions.
 6. That the Registrar of Companies or his appointed agent oversee the Annual General Meeting of Kirobon Farmers to be held as per court's directions.
 7. That the Honorable Court be pleased to make any such further orders and issue any other relief it deems just and equitable to grant in the interest of justice.
 8. That costs of the application be provided for.
2. The application is supported by the sworn affidavit of Daniel Kandie the 1st defendant/applicant and a shareholder/member of the plaintiff/respondent dated the same date as well as the grounds on the face thereof.
 3. He deposed that this court ordered the directors of plaintiff/respondent to hold an Annual General Meeting (AGM) on 16th July 2021, and that an agreed list of members to be used at the AGM and further a representative of the Registrar of companies to preside over the meeting. That the meeting did not take place as a result of the gathering restrictions put in place by the government as part of the Revised Covid -19 Mitigation Measures. That further, in total violation and disregard of the law and the court order, the directors of Kirobon farmers, the plaintiff/respondent herein, have since increased the number of shareholders from 218 members to 610 members with an increase of 399 members who have purportedly become members over the period of the last two years that the directors have been in office.
 4. He deposed further that the new 399 members are only cronies and partners of the directors in a calculated move to continue misusing/mismanaging and squandering the company's assets. That their counsel on record wrote to the registrar raising the same issues and requesting for the current list of members and the previous resolutions passed by the members, a request which was amply responded to and the current list of shareholders issued.
 5. He went on to depose that the plaintiff/respondent proceeded to announce on vernacular radio stations for an AGM to be held at Keringet Social Hall on the 29th of December 2021 and stated that the shared list of 610 members is what would be used. That despite 144 Members out of the 211



members of the Company having requested and petitioned the meeting to be held at the D.O.'s District Officers office in Ngata as the proposed venue of Keringet Social Hall is a distance from the residence of most members. The directors of the company proceeded to have the meeting in total disregard and in violation of the Companies Act 2015 and this courts orders dated 16th July 2021.

6. It was his disposition that unless this honorable court intervenes and stops there horrendous and illegal acts by the plaintiff/respondent, the applicants would be subjected to irredeemable loss of the investment made in the company and create anarchy within company.
7. The plaintiff/respondent vide the replying affidavit of David K. A. Metet one of its directors sworn on 22nd February 2022 opposed the said application on the grounds that as directors of the company they filed the present suit against the respondents who were interfering with the company and wrongfully purporting to call for the company annual general meeting despite the fact that there was no requisition and there were directors lawfully in office. That consent orders were recorded in this matter that an annual general meeting be called for by the directors on the 6th August, 2021 at Keringet Social Hall. That further, though the company advertised for an annual general meeting as per the order of the court an annual general meeting could not be held due to Covid 19 Pandemic restrictions.
8. The plaintiff/respondent averred that with the advice of the County Commissioner when restrictions were eased they called for the company's annual general meeting at Keringet Social Hall on the 29th December, 2021 though their number was restricted not more than 200 members. That the annual general meeting was successful and was attended by 212 members including the applicants and 9 directors were elected.
9. The plaintiff/applicant denied having increased the number of company shareholders from 211 to 610 members and the position was that the company had 218 members from Ngata and 389 from Keringet making a total of about 608 members. That at the time they took over the directorship of the company a former director and chairman Kibowen Kemei had handed over to another former director and chairman the late Benjamin Chesulut the company records way back on the 2nd January, 1981 that were equally handed over to them by him indicating a membership of 616 members that is 229 from Ngata and 387 from Keringet.
10. The plaintiff/respondent denied the allegation by the applicants that the meeting was held without following the court order, not following the required procedure, not having security, no agreed list of members, using nonmembers, not following Covid 19 protocols, not allowing legitimate shareholders and their views and there was no iota of proof of the said wild allegations.
11. That the registrar of companies was informed about the AGM and sent a representative one Hillary Chepkwony to the meeting and that it was not mandatory for the registrar of companies to be present and at any rate he has not lodged any complaint. That further, security was tight at the meeting with the presence of the OCS Keringet Police Station with his security team and they even stopped the applicants who had planned to disrupt the annual general meeting.
12. The plaintiff/respondent averred further that though all the applicants apart from Susan Rono and Cheruiyot Sigilai attended the annual general meeting only Stanley Chemgorem signed attendance and all the others led by Daniel Kandie refused to sign attendance and were actively urging other members not to sign up attendance. That all the applicants were residents of Ngata and not Keringet and have for a long time been attempting to create divisions in Kirobon Farmers Company Limited in the name of Ngata and Keringet.
13. It was averred further on behalf of the plaintiff/respondent that the applicants had no locus to file the present application and that it would be extremely prejudiced by the applicants and the orders that



they obtained as they held a proper annual general meeting as directed by the Honourable Court and the members had spoken and wished to move forward. That further, if the applicants wished to be elected directors they could wait for the next annual general meeting as they had not been able to pin point any wrong doing on its part.

14. The applicants in response to the plaintiff/respondent replying affidavit filed a supplementary affidavit dated 18th March 2022. They denied the claim by the applicants that the County Commissioner had given a go ahead for the annual general meeting and restricted their numbers to 200. They further denied having attended the said illegal meeting or authenticated the proceedings and that the registrar had also confirmed that she had not sent a representative by the name Hillary Chepkwony to the said meeting.
15. They went on to state that no records on changes on directorship existed in the company's file nor the companies' registrar's office, that furthermore the last general meeting of the company held on 18th January 2019 a list of 212 members and same showed that the plaintiff/respondent attempted to hide the illegal increase of the shareholder without following due procedure. That this was despite the plaintiff/respondent being served with the court order issued on 2nd February 2022 and served on them on the same date.
16. When the matter came up for hearing the court directed that the same be disposed by way of written submission which both parties have complied.

Defendants/Applicants Submissions

17. The defendants/applicants in their submissions identified two issues for determination. The first issue being whether the election was conducted in accordance with the court order. They submitted that the same failed for there was lack of an inclusive process in the harmonization of the members' list, the inclusion of non-members into the membership of the company, the failure to inform and involve the Registrar of Companies and totally ignored the orders by the court dated 16th July 2021.
18. The court's attention is drawn to the cases of *Kyangaro v Kenya Commercial Bank Ltd & Another* [2004]1 KLR 126 as cited in *Patrick Waweru Mwangi & Another v Housing Finance Co. of Kenya Ltd* [2013] eKLR and *T.N Cadavarman Thiru Mulpa v Ashok Khot and Another* [2006] 5 SCC.
19. On the second issue, on whether the election was conducted in accordance with the *Companies Act*. The applicants cited section 280 of the *Companies Act* 2015 which provides for the courts' power to order an AGM and how the same should be conducted. They submitted that provisions of section 280 (3) of the said Act were not adhered to, therefore the rendering the resolution passed in the purported AGM on 29th December 2021 null and void. In conclusion they urge the court to pronounce itself and stop the horrendous acts by the plaintiff/respondent which would result in salvaging the company from irreparable loss of investments made over years and restore its corporate governance.

Plaintiff/Respondent

20. The plaintiff/Respondent placed reliance on the contents of its replying affidavit and submitted that the AGM was held in accordance with the directions of the court. That the applicants had no locus to file the present application and that further if they had any grievance they should file a different comprehensive suit in line with the Company's Act. It is submitted further that the directors of the company were in office as per the AGM and should be allowed to carry on with their work until their term is over. It urged the court to dismiss the present application with costs.



Analysis and Determination

21. I have perused carefully the plaintiff/applicant's application, the supporting affidavit and submissions. I find that there is only one major issue for determination namely whether the Annual General Meeting held on 29th December 2021 and the resolution passed there in were null and void.
22. It is not disputed that this court by consent of both parties issued orders on 16th July, 2021 on how and when the AGM was to be conducted. It is the applicants' case that the said orders were not adhered to by the plaintiff/respondent and they went ahead to produce a letter from the Registrar of Companies stating that she was not informed of the AGM that was held on 29th December 2021 and she did not send any representative. They further produced a letter from the OCS Keringet stating that he was duly notified of the said AGM but he did not give a limit of the members who were to attend because the plaintiff/respondent in its letter had indicated that they would abide by the Covid 19 regulations.
23. On the other hand, the plaintiff/respondent argued that that the AGM was held in accordance with the directions of the court and that the applicants had no locus to file application. In support of its case the plaintiff/respondent in its replying affidavit averred that the Registrar of Companies sent a representative by the name Hillary Chepkwony and that the OCS Keringet Police station was present during the AGM of 29th September 2021 together with his security team. It was further stated that the applicants together with 212 members and 9 directors attended the said AGM.
24. In view of the foregoing and having considered the arguments by both parties and the court record, this court finds that the AGM of 29th December 2021 was held in contravention of the court order dated 16th July 2021 arising from a consent entered by both parties in court concerning the said AGM. The plaintiff/respondent has failed to give sufficient proof that they followed the said orders in conducting the AGM held on 29th December 2021 in particularly by ensuring that the Registrar of Companies presided over the said meeting. The meeting as per the resolution annexed to it replying affidavit was presided by the board of directors' chairman.
25. Looking at the consent order the respondent complied generally with items 1,2,4,5 and 6. The crucial ground number 3 was not complied with. The reason of having the registrar of companies oversee the meeting was for obvious reasons namely, that he would be a neutral umpire and at any rate the filing of the returns shall be in his office. To the extent that the said Hilary Chepkwony was not an official from the said office the AGM was therefore voidable.
26. There is no evidence that the said registrar was notified of the meeting and he failed to turn up and or failed to send a representative. The said Hillary Chepkwony should have sworn an affidavit in support or at least be endorsed in the minutes.
27. The Court of Appeal in *Justus Kariuki Mate & Another -vs- Martin Nyaga Wambora & Another* [2014] eKLR cited *Lord Cottentam L. C in Chuck -vs- Cremer (1) Coop Temp.* Cott 342 where it was held: -

“A party who knows of an order, whether null or valid, regular or irregular cannot be permitted to disobey it It would be most dangerous to hold the suitors or their solicitors, could themselves judge whether an order is null or valid whether regular or irregular. That they should come to court and not take it upon themselves to determine such a question. That the course of a party knowing of an order, which was null or irregular, and who might be affected by it, was plain. He should apply to court that it might be discharged. As long as it exists, it must not be discharged.”



28. In view of the above and having evaluating the material and facts placed before the court, i that the plaintiff/respondent was well aware of the orders given by this court on 16th July 2021 and that notwithstanding decided to hold the AGM without involving the Registrar of Companies. The plaintiff /respondent clearly breached the said court order, thus the AGM held on the 29th December 2021 and the resolutions thereof are null and void.
29. So what is the way forward for this troubled company? The road map vide the consent dated 5th July 2021 and issued on 16th July 2021 ought to be followed. There is nothing that has changed as such save that the Covid issue has subsided and hopefully all members of the company should be able to turn up. The venue of the meeting should still be at the venue agreed and all the terms of the consent ought to be adhered to.
30. In the premises the application is allowed as hereunder.
- a) All the resolutions of the plaintiff's AGM dated 29th December 2021 and the consequences therefrom are hereby set aside.
 - b) The parties herein do comply with the orders issued as per the consent dated 16th July 2021 save for the date which should be determined by the plaintiff/respondent but not less than 30 days from the date herein.
 - c) Costs shall be in the cause.

DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAKURU THIS 23RD DAY OF JUNE 2022.

H. K. CHEMITEI

JUDGE

