



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL & TAX DIVISION
MISC. APPLICATION NO. 366 OF 2017
IN THE MATTER OF COMPANIES ACT NO. 17 OF 2015 LAWS OF KENYA

AND

**IN THE MATTER OF AN APPLICATION FOR THE RECTIFICATION OF THE REGISTER UNDER SECTION 103 OF THE
COMAPNIES ACT NO 17 OF 2015 LAWS OF KENYA**

AND

**IN THE MATTER OF RECTIFICATION OF THE COMPANY REGISTER OF FEEDBACK AND SAVE LIFE INVESTMENT
LIMITED**

BETWEEN

DAVID MUCHINA MUTURA.....1ST APPLICANT

MOSES GACHATHI MATHERI.....2ND APPLICANT

AND

FEEDBACK & SAVE LIFE INVESTMENT LTD....1ST RESPONDENT

REGISTRAR OF COMPANIES.....INTERESTED PARTY

RULING

This ruling relates to Notice of Motion application dated 15th August 2017, pursuant to **Section 103 of the Companies Act No. 17 of 2015, Order 51 Rule 1 of the Civil Procedure Rules, 2010** and all other enabling laws. The Applicant sought orders;

1. That this Court directs the Registrar of Companies (Interested Party herein) to rectify the Company Register of Feedback and Save Life Investment Limited by deleting the names presently appearing registered as Directors or Shareholders of the 1st Respondent and replacing them in terms of prayer number 2.

2. That this Court directs that the rectified register does reflect the following as the shareholders and directors of Feedback and Savelife Investment limited:

Shareholding

a) Stanley Nganga Wainaina	-	5 shares
b) Moses Gachathi Matheri	-	4 shares
c) David Muchina Mutura	-	4 shares
Total	-	13 shares

Directorship

- a) Stanley Nganga Wainaina - Director
- b) Moses Gachathi Matheri - Director
- c) David Muchina Mutura - Director

The Application was based on the following grounds:

- a) That the Company's directors had been in wrangles since 2002 whereupon the Applicants herein were forcefully ejected from an Annual General Meeting by one Stanley Ng'ang'a Wainaina and others;
- b) That the said Stanley Ng'ang'a Wainaina through corrupt and fraudulent dealings omitted the names of the Applicants in the Company's Register as directors;
- c) That the said Stanley Ng'ang'a Wainaina the Respondent knowingly and illegally entered the names of the other unknown persons in the Company's Register as directors and shareholders.
- d) That the Applicants were notified of the fraudulent change of directorship in the company by clients who realized that certain parcels of Land owned by the Company were being fraudulently transferred to strangers and unsuspecting members of the public.
- e) That the Annual Reports of the years 2000 – 2001 and 2002 indicated new names as Directors of Feedback and Savelife Investment Limited despite their being no documents at the Company Registry to support the change in Directorship.
- f) That the Interested Party herein has since maintained the Applicants herein are the Directors/Shareholders of the Company composition of which has never procedurally changed since the incorporation of the company.
- g) That the Respondents have been given several opportunities to justify the change in directorship but have failed to do the same.

REPLYING AFFIDAVIT

The application was opposed through a Replying Affidavit dated 18th October 2017 sworn by Stanley Ng'ang'a Wainaina Director of the 1st Respondent. He averred that, during 1991- 1992 tribal clashes many people were affected and most of his relatives were victims.

He stated that due to those disturbances he hosted many people who became homeless. He hosted them in his house at Kayole and his rural home.

That he (Stanley Nganga) came up with an idea of registering a company to settle the displaced people and they formed a group of 17 people, including the Applicants. They met in his house at Kayole and deliberated on the issue.

That they decided that 14 people would be part of the Planning Committee but the two Applicants and Stanley Ng'ang'a were elected officials as follows;

Stanley Ng'ang'a Wainaina - Chairman

David Muchina Mutura - Secretary

Moses Gachathi Matheri - Treasurer

That they thought of venturing into other businesses but they did not go far as the Applicants, who were mandated to buy property under the company. The Secretary; David Muchina Mutura bought and registered the property in officials' names and included the name of Stanley Ng'ang'a, without even consulting him.

That the Applicants and the Stanley Ng'a ng'a were the signatories of the company accounts, but when he asked why the property was registered in their three names i.e David Muchina Mutura; Moses Gachathi Matheri and Stanley Ng'ang'a Wainaina instead of the Company name (**Feedback and Savelife Investment Limited**) they started quarrelling with each other.

That the Applicants reported him to the Police falsely accused him of many unfounded allegations. Stanley Nganga Wainaina, the Chairman was arrested and locked up at Kilimani Police Station but was released without any charges being preferred against him.

DETERMINATION

The Court considered the pleadings by parties and submissions with regard to the instant application and the issues for determination are; whether this Court at this stage can/may grant the orders sought to order the Registrar of Companies to rectify the Register and retain names of Directors as they were before the irregular changes in the register.

From the pleadings, the Plaintiffs claim that they were ousted as *bonafide* Directors/shareholders of the Company.

The Respondent claims that the Plaintiffs were involved in spending members' funds to purchase land and instead of registering it in the Company name they registered in their personal names without knowledge and authority from share holders.

The Plaintiffs accused the Respondents of failing to observe, obey, adhere to and abide by the Companies Act and the Company's Constitution; Memorandum and Articles of Association.

The Respondents also accused the Plaintiffs of acting with impunity and in total disregard of validity and sanctity of ownership of property bought in the Company's name.

The interested Party submitted that the Respondent Company was registered in 1994 with 3 original Directors. The annual Returns of 2000, 2001 and 2002 the names of Directors then were changed and now included 7 individuals. The Company has 47 members/shareholders. The Registrar of Companies requested that the Respondent, Stanley Nganga Wainaina to explain the circumstances that led to the present anomaly of change of Directors contrary to the Company's Constitution and Companies Act vide several correspondences which he did not reply or attend to, to no avail.

In reliance of **Section 103 of the Companies Act 2015**, the matter was filed in Court for determination.

The Court on consideration of submissions finds as follows;

- a) This Court cannot grant such orders at the interlocutory /interim stage based on affidavit evidence only. In light of the accusations and counter accusations swinging from the Applicants to the Respondents and *vice versa* on the conduct of management and operations of the Company, such crucial issues can only be determined on the basis of direct evidence, its veracity tested through cross examination and credibility of authors of documents and witnesses so as to enable the Court grant an informed final decision.
- b) On the other hand, to wait for hearing and determination of the matter is to risk the sustenance of the Company as a going concern.
- c) To mitigate loss and/or damage to Members/Shareholders investment in the Company
- d) The Court orders by virtue of **part XXIX — protection of members against oppressive conduct and unfair prejudice (section 780 and 782 of the companies Act)** the Registrar of Companies to move in the Company's offices and inspect the Company's register of shareholders, bank records and Company's register of assets and/or properties. The Registrar as Inspector shall also look into operations and management of the Company, the officers of the Company and possibly how new Directors set in and if it is found to be contrary to **Section 139 of Companies Act, Section 328 & 329 of Companies Act** to present a status report to Court and it shall be served to the Directors of the Company within 60 days from today.
- d) The matter shall be mentioned on 13th May 2020 for further orders after the receipt of the report.

DELIVERED SIGNED & DATED IN OPEN COURT ON 13TH MARCH 2020

M.W.MUIGAI

JUDGE

IN THE PRESENCE OF;

NO APPEARANCE FOR THE APPLICANTS

NO APPEARANCE FOR THE RESPONDENTS

COURT ASSISTANT- TUPET