



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**MILIMANI LAW COURTS**

**COMMERCIAL & TAX DIVISION**

**HCCC NO. E 108 OF 2019**

**IBRAHIM HUSSEIN MAHADI.....1<sup>ST</sup> PLAINTIFF/RESPONDENT**

**MAHADI ENERGY LIMITED.....2<sup>ND</sup> PLAINTIFF/RESPONDENT**

**VERSUS**

**FIRST COMMUNITY BANK.....DEFENDANT /APPLICANT**

**RULING**

1. This is the third Ruling this Court has had to make in rather quick succession. It is in respect to the Notice of Motion dated 27<sup>th</sup> September 2019 and filed on 1<sup>st</sup> October 2019 seeking that this Court review's its Ruling and order of 27<sup>th</sup> September 2019.
2. Although the Respondents' reply to the Motion was expunged from the record as being time barred, still the order sought is not grantable, and this Court has expressed itself on the matter sufficiently in its two Rulings.
3. The Applicant says that it has discovered a new matter of a decisive nature which makes a review of the Ruling of the Court of 27<sup>th</sup> September 2019 inevitable. That it is now revealed that the 1<sup>st</sup> Plaintiff (Ibrahim Hussein Mahadi) holds a power of attorney from one Adan Abdullahi Alio, said to be a Director of the 2<sup>nd</sup> Plaintiff.
4. The Court is asked that, by parity of rationale of the said Ruling in relation to the further affidavit of Hussein Hassan Amin, all affidavits sworn by the 1<sup>st</sup> Plaintiff be "retreated".
5. In respect to the further affidavit of Hussein Hassan Amin, this Court held:-

"10. Annexed to the affidavit of Yahya Dahir also sworn in support of the application is a search of the records of Mahadi as at 4<sup>th</sup> June 2019. The names of directors and shareholders is given as follows:-

<u>Name</u>	<u>Share</u>
Adan Abdullah Aliow	
Director/shareholder	200
Abdi Hassan Amin Director/shareholder	200
Dormohamed Mohamed Dormahamed	
Director/shareholder	200

It is therefore clear that even if Hussein held a valid power of attorney on behalf of his brother, he (Hussein) is not a director of the Company

and would not have the legal authority to speak as a director of the Company. The power of attorney cannot cloth him with directorship. In the affidavit that was struck out by Court he purports to make assertions as a director of Mahadi which is factually disproved by the search. Hence the decision of the court.”

6. This Court has revisited all affidavits made by the 1<sup>st</sup> Plaintiff in this matter. In all of them he refers himself as the chairman of the 2<sup>nd</sup> Plaintiff. In others he also refers to himself as the Managing Director. He asserts directorship in his own right and not because he is holding a power of attorney on behalf of another director. I am not told that a Director cannot be a Director in his own right but nevertheless still hold a power of attorney for another director. Certainly, in the latter capacity he cannot be a director unless admitted as an alternate Director in accordance with Article 25 of the Articles of the Company. In none of the affidavits before Court has the 1<sup>st</sup> Plaintiff asserted that his directorship is derived from the power of attorney donated to him by Adan Abdullah Alio.

7. As for Hussein Hassan Amin he had deponed that:-

“I am a Director of 2<sup>nd</sup> Plaintiff by virtue power of attorney by my brother Abdi Hassan Amin who is a director of the 2<sup>nd</sup> Plaintiff.....”

8. And I would have thought that my decision of 13<sup>th</sup> May 2020 sufficiently distinguished the two. I observed:-

“29. In conclusion, the Court is inclined to make a comparison of this outcome and that in respect of Hussein Hassan Amin made in the Court’s ruling of 27<sup>th</sup> September 2019. In the latter, there was the communication of the registrar showing that Hussein was not a director as at 4 June 2019. In an affidavit sworn on 24<sup>th</sup> June 2019, Hussein answers this by stating that he was a director by virtue of a power of attorney granted to him by his brother, Amin. He did not lay a claim to directorship on his own right. To that the Court held that the power of attorney could not cloth him with directorship. In the current matter the issue is whether Ibrahim, on his own right, is not a director.”

9. There is no merit in the Notice of Motion of 27<sup>th</sup> September 2019. It is hereby dismissed but with no orders as to costs as the Respondents did not participate.

**Dated, Signed and Delivered in Court at Nairobi this 27<sup>th</sup> Day of July 2020**

**F. TUIYOTT**

**JUDGE**

**ORDER**

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 17<sup>th</sup> April 2020, this Ruling has been delivered to the parties through virtual platform.

**F. TUIYOTT**

**JUDGE**

**PRESENT:**

**Mr Agwara for the Plaintiffs**

**Dr. Kenyariri for the Defendant.**