



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CIVIL CASE 171 OF 2017**

**ROBERT MACHARIA KURIA.....1<sup>ST</sup> PLAINTIFF**

**EDWARD NJENGA MUCHAI.....2<sup>ND</sup> PLAINTIFF**

**SAMUEL NGETHE NDIRANGU.....3<sup>RD</sup> PLAINTIFF**

**TADDEO MUIRURI MUNGAI.....4<sup>TH</sup> PLAINTIFF**

**VERSUS**

**DAVID MACHARIA THIGA.....1<sup>ST</sup> DEFENDANT**

**SEBASTIAN MUNGAI.....2<sup>ND</sup> DEFENDANT**

**LUCY WAMBUI GITHAIGA.....3<sup>RD</sup> DEFENDANT**

**JOSEPH MUGWIMI MWANGI.....4<sup>TH</sup> DEFENDANT**

**MICHAEL MUTUA.....5<sup>TH</sup> DEFENDANT**

**PETER HEHO.....6<sup>TH</sup> DEFENDANT**

**NANCY NJOKI.....7<sup>TH</sup> DEFENDANT**

**RULING**

This case revolves around a dispute centred on leadership where the contesting parties claim responsibility for running a company known as Ndirikania Company Limited. It is the plaintiffs case that an annual general meeting held on or about 14<sup>th</sup> September, 2015 by the defendants was unlawful and illegal. It is their case therefore that the said meeting should be declared unlawful and illegal and that the defendants should be barred from conducting the affairs of the said company.

There is also a prayer that the defendants should be compelled to furnish all members/shareholders with proper audited accounts for consideration at any general meeting convened by itself or as the court may direct to be convened and supervised by the Registrar of Companies in accordance with the law and articles of the company.

Alongside the plaint there was filed an application by way of Notice of Motion seeking injunction orders against the defendants to restrain them from running the affairs of the said company. That application is the basis of this ruling.

The application is supported by an affidavit sworn by Robert Macharia Kuria said to be the secretary and shareholder of the company. The defendants have opposed the application and there is a replying affidavit sworn by David Macharia Thiga a director of the company. Both parties have filed submissions to address the issues herein.

From the pleadings the orders sought by the plaintiffs may not resolve the issues raised considering that this is an internal dispute relating to the leadership of the company. Both the plaintiffs and the defendants claim rights of leadership in the company. It cannot be said at this stage that either the plaintiffs or the defendants have a prima facie case with a probability of success.

Further, in a dispute of this nature, the issue of whether or not damages would be adequate compensation for the successful party may not be a reasonable consideration. I am not in doubt about the foregoing observation but even if I were, the balance of convenience would tilt in favour of maintaining the status quo but with a rider that subject to all the parties filing their respective pleadings and complying with Order 11 of the Civil Procedure Rules, the matter be fast tracked so that the issues can be addressed in a full trial. Consequently, I do not find merit in this application and therefore dismiss the same with both parties bearing their own costs.

***Dated, signed and delivered at Nairobi this 28<sup>th</sup> Day of March, 2019.***

**A.MBOGHOLI MSAGHA**

**JUDGE**