



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**COMMERCIAL & ADMIRALTY DIVISION**

**HCCC NO. 277 OF 2016**

**GITHUNGURI CONSTITUENCY**

**RANCHING COMPANY LIMITED.....PLAINTIFF/RESPONDENT**

**VERSUS**

**AHMED CHEGE GIKERA .....1<sup>ST</sup> DEFENDANT/APPLICANT**

**HENRY WAINAINA KIHORO..... 2<sup>ND</sup> DEFENDANT/APPLICANT**

**RULING**

1. I make this short Ruling only in respect to whether the meeting of the Plaintiff Company ought to proceed tomorrow (19<sup>th</sup> December 2019). There is a plea to stop it brought through a Notice of Motion dated 16<sup>th</sup> December 2019.
2. I have heard Counsel argue for and against grant of the order. The application is for an equitable remedy and the principles for invocation of an equitable relief must be borne in mind. One is that equity does not aid the indolent. Put differently, equity is on the side of the agile.
3. Whether or not a party has been indolent in seeking the Court's intervention depends on the circumstances of each case.
4. In the matter before Court, notice of the meeting sought to be enjoined was published on 28<sup>th</sup> November 2019. The Applicants do not say when they got to know of the meeting. Such disclosure is material in this type of matter as it helps the Court assess whether the applicant has acted as quickly as equity expects of him.
5. Without any plausible explanation for delay, then this last minute application mounted just three days before the meeting must be held to fail that important test. The failure is not without significance. When a party to a long standing dispute such as this comes very late to Court then it denies Court opportunity to sufficiently consider the merit or demerit of the matters before it. For that reason only, I am unwilling to grant the order.
6. Even if I was to consider another issue, it is clear that the applicants have not filed a Defence. Interlocutory motions are not causes of action, they are not an end in themselves. They are to serve a purpose, to preserve status quo or the subject matter pending the determination of the main cause. So far no counterclaim or claim has been presented to this Court by the Defendants by way of formal pleadings. I am aware that there is occasion when the Court can grant a Defendant an injunction but it must be on something, a Defence.
7. I will not injunct the Plaintiff from holding the meeting due for tomorrow. However, the AGM will not discuss and pass resolution in respect to matters that form the Plaintiffs cause of action and comprised in their Plaint dated 12<sup>th</sup> July 2016 and for which they do not already have the orders of this Court.

**Dated, Signed and Delivered in Court at Nairobi this 18<sup>th</sup> Day of December 2019.**

**F. TUIYOTT**

**JUDGE**

**PRESENT;**

Wangai for Defendants/Applicants

Njenga for Plaintiff/Respondent

Court Assistant: Nixon