



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
HIGH COURT CIVIL CASE NO. 1 OF 2017

NORTH TETU FARMERS COMPANY LIMITED.....PLAINTIFF

VERSUS

DANIEL GATUGUTA KING'ORI AND 7 OTHERS.....DEFENDANTS

RULING

The plaintiff herein filed a suit on the 4th January 2018 accompanied by a notice of motion brought under certificate of urgency on the same date.

The plaint sought orders *inter alia*;

- a. a permanent injunction restraining the defendants from holding themselves as directors, executive committee members and/or officers of the plaintiff
- b. A permanent injunction restraining the defendants from proceeding with the General meeting as requisitioned in the notice dated 8th December 2016 or at all.
- c. A declaration that the requisitioned meeting by the defendants is illegal and void for all purposes.

The NM sought orders *inter alia* that;

1. The application be certified urgent, heard *ex parte* in the 1st instance due to its urgency
2. Pending the hearing and determination of the application *inter partes* this honorable court be pleased to issue a temporary injunction against the defendant/respondents, restraining them from proceeding to hold a General meeting as requisitioned in the Notice dated 8th December 2016, or at all.
3. Pending the hearing and determination of the application *inter partes* this honorable court be pleased to issue a temporary injunction against the defendant/respondents, restraining them from holding themselves as directors, executive committee members and /or officers of the plaintiff/applicant.
4. Pending the hearing and determination of the suit herein the Honorable court be pleased to declare the requisitioned meeting as illegal and void for all purposes.
5. Pending the hearing and determination of the suit herein the Honorable court be pleased to issue a temporary injunction against the defendants, restraining them from proceeding to hold a general

meeting as requisitioned in the notice dated 8th December 2016 or at all, and from holding themselves as directors, executive committee members and /or officers of the plaintiff. for all purposes.

On 4th January 2017 Mativo J granted the application in terms of prayer 1, 2 and 3.

On the 11th January 2017 the defendants filed a replying affidavit to the notice of motion sworn by Daniel Gatuguta King'ori.

On the 20th February they filed their statement of defence.

On 27th March 2017, the parties agreed to dispose of the application by way of written submissions.

The matter was mentioned several times for submissions to be filed., with the respondents seeking leave midstream to file additional documents. Matter was to be mentioned on 24th August 2017 for parties to file submissions.

On 13th June 2017, another application was filed under certificate of urgency by the plaintiff.

The prayers sought were; that;

1. The application be certified as urgent, heard exparte in the 1st instance due to its urgency
2. Pending the hearing and determination of the application interpartes the honorable court be pleased to issue a temporary injunction against the defendants/respondents restraining them from holding themselves as directors, executive committee members and /or officers of the plaintiff/applicant pursuant to a meeting held on 2nd January 2017
3. This honorable court be pleased to make an order requiring a meeting of the plaintiff/applicant company to be convened, held and conducted in any manner the court considers appropriate.
4. This honorable court be pleased to make an order requiring a meeting of the plaintiff/applicant company to be convened by the registrar of companies and conducted under the supervision of the registrar of companies.
5. The honorable court be pleased to order that an officer and or representative from the registrar of companies shall superintend at the meeting of the plaintiff applicant and will be the returning officer during the conduct of the elections to elect the directors of the company.
6. The OCS Nyeri Police station and the Nyeri County Commissioner be directed to provide adequate security during the elections of the North Tetu Farmers Company Limited.
7. The costs be provided for.

I issued the temporary orders. The application and orders were served and the parries appeared before me on the 2nd October 2017 through their respective counsel, Mr. Kiboi for the applicant, Mr. K Wachira for the respondents.

The issue then was that the applicant had two interlocutory applications pending and that amounted to an abuse of the process of court. Counsel for the applicant decided to consolidate the two and the matter would be determined by way of written submissions.

After two other mentions, on 15th November 2017, the court was told that all parties had filed their written submissions. The Ruling date was set for 17th January 2018.

As I am writing this ruling, upon perusal of the record I only found the plaintiff applicant's submissions.

From the pleadings, and the affidavits and annexures filed by either party, the contest here is who are the bona fide chairman, directors and members of the executive committee of the plaintiff applicant.

Joseph Nderitu Wanjau filed the suit and application herein describing himself as the Chairman/Director of the applicant. He relied on a document CR 12 dated 30th September 2016, purporting to be issued by the Registrar Companies listing him, appearing as Joseph Nderitu Wanjohi as one of the directors of the plaintiff/applicant. He contended that the defendants, purporting to be the directors of the plaintiff applicant had called a General Meeting vide a notice dated 8th December 2016, to be held on the 6th January 2016 at 10:00am at Ruringu Museum Grounds.

On the strength of those contentions the Hon Mativo J issued orders on the 4th January 2017 restraining the defendants from holding the scheduled meeting and from holding themselves out as directors of the plaintiff.

In the replying affidavit of 1st respondent, he averred that the Joseph Nderitu Wanjohi was no longer the chairman of North Tetu Farmers Company Limited. That the CR 12 he had relied on was a forgery. That General meeting was held on the 2nd January 2017 where the defendant respondents were reelected into office. That he and the defendant respondents had been in office in 2014, in 2016 as per the annexures from the registrar of companies dated 20th May 2016 and 13th March 2014, and as at 14th April 2016, they were in office as per the CR 12 dated 9th January 2017.

In a further replying affidavit of 8th May 2017, the 1st respondent annexed a document from the Registrar companies indicating that the document dated 30th September 2016 did not emanate from the office of the registrar companies.

Noting the turn of events, the plaintiff applicant filed the application of 13th June 2017 for the reason that what they had intended to restrain had prima facie been overtaken by events. He also averred that no meeting took place as alleged and no elections had taken place.

The 1st respondent in his replying affidavit of 19th July 2017 deponed that he and his team had been in office since 2001. That they had indeed called for a meeting on the 6th of January 2017, but because members had complained about it colliding with the school opening day, they had rescheduled it to 2nd January 2017 vide q notice dated 9th December 2016.

He annexed copies of the notice, police permission and the minutes.

That elections were held and his entire team had been reelected.

That this second application was an abuse of the court process and the applicant ought to have withdrawn the suit and filed a fresh one.

I have carefully considered the rival affidavits, annexures and applicant's submissions.

This is clearly a leadership wrangle for the control of North Tetu Farmers Company Limited, with each side trying everything to outdo the other.

The Office of the Registrar of Companies appears to have produced quite a number of contradiction information as to who are the actual directors of the company. From the record I gather that there are two other related suits before this court HCCC 13 of 2014, NORTH TETU FARMERS LIMITED VERSUS JOHN NDERITU WANHOHI and HCCC 2 of 2017, carrying various orders, and the plaintiff applicant here has even been subject to criminal proceedings in Nanyuki CM Criminal Case no 386 of 2001.

The plaintiff applicant chose to consolidate the two applications. The respondents did not object. However, the question is, can the application of 13th June 2017 stand on the plaintiff filed on the 4th January 2017?

In my view what is clear on the face of the application is that there are orders sought that are not all supported by the plaintiff. Those orders would be standing on air and would of necessity have to be let go to follow the wind. Anything to do with what may have happened on the 2nd January 2017 would not be supported by the suit as it stands.

Nevertheless, in the affidavit of the 1st respondent of 11th January 2017 depones to facts which the plaintiff applicant has not repudiated, in particular the suit HCCC 23 of 2014. In his own sworn affidavit annexed, he confirms that there are orders restraining him from '**presenting, passing off and conducting himself as a director and chairman of the plaintiff**'. Justice Mativo delivered a ruling in that matter on the 27th January 2016, in an application that had cited the plaintiff applicant herein for contempt. That application was dismissed for lack of evidence. It would appear to me that those orders are still in force. The plaintiff applicant did not reveal the existence of that suit or the orders pending therein. Why?

If those orders are still in force, as they appear to be, then the plaintiff applicant was in abuse of the said orders when he filed the applications herein, as he was under restraining orders not to present himself as the chairman/director of the said company. In any event there appear to be conflict here whereby in HCCC 23 of 2014 he is being sued by the company. In this suit he purports to sue on behalf of the company. surely that is a position that cannot be allowed to subsist, as it is an abuse of the court process.

The only prayer available the plaintiff applicant is the one seeking to restrain the defendant respondents from presenting themselves as directors of the company.

According to the principles laid down in **Giella versus Cassman Brown & Co. Ltd [1973] EA 358**

- The applicant has not demonstrated a prima facie case with a probability of success. This is because the event he sought to stop had already taken place. The defendant respondents had purportedly already been elected and were already in office by the time of the application. There is evidence on record that the applicant was also under restraining orders that took away his capacity to file this suit and application. The issues raised herein could be dealt with in HCCC 23 of 2014 as it is not in the interests of justice, efficient use of judicial resources to have a multiplicity of suits.
- The applicant has not demonstrated that he will suffer irreparable injury if the restraining orders are not granted. There is another suit where the person he is purporting to sue on his behalf is suing him. They need to settle the issues and determine who will suffer damage.
- There is no doubt that on the above two issues.

The only way this matter will be settled once and for all is for the matter to be heard in full. This will only happen if this matter and HCCC 23 of 2014 are heard together.

In the circumstances the application of 13th June 2017 is struck out with costs to the defendant respondents.

The application of 4th January 2017 is dismissed. Costs in the cause. This matter be placed before the presiding judge for directions with regard to its consolidation with 23 of 2014.

Dated, delivered and signed this 17th January 2018 at Nyeri.

Teresia M. Matheka

Judge

In the presence of;

Court assistant: Harriet