



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CIVIL SUIT NO 12 OF 2017

UDALI GROUP LIMITED.....PLAINTIFF

Versus

UMBERTO RTCCARDO DELLAVALE.....1ST DEFENDANT

FIESQUIS MARINA MARIAM CISSE MBOISSEME.....2ND DEFENDANT

DECI GROUP LIMITED.....3RD DEFENDANT

ELDAMA RAVINE STONES LIMITED.....4TH DEFENDANT

RULING

Operations of a company

[1] The court directed parties to address it through submissions on how the company herein should operate as parties continue to ventilate their feuds. The plaintiff submitted that the ideal situation would be to hand over the machinery in issue to the two shareholders to continue with operation, except that may not be possible because:

- 1. Parties have failed to agree;*
- 2. There is no dispute mechanism provided in case shareholders disagree;*
- 3. Deci Group Limited failed to account for the years it operated the business; and*
- 4. Umberto is out of the country.*

[2] On the basis of the foregoing, the plaintiff proposed that:-

- 1. The machine and all the equipment (“the equipment”) be released to Udali Group Limited through Nnaemeka Okonkwo (“Emeka”).*
- 2. Emeka to take stack/inventory of all the equipment that will be handed over to him. This to include all the equipment still at the Consolata Mission Hospital and the equipment at the Runyenjes Police Station.*
- 3. The inventory to be filed in Court for accountability.*
- 4. The equipment be used to generate income for both shareholders.*
- 5. Udali Group Limited through Emeka to operate as follows:-*

(a) Transport all the equipment to Thika at the cost of Udali Group Limited. This cost shall be recorded, receipted and disclosed to the Court and the defendants.

(b) Rent a piece of land of five (5) acres, in Thika to put the machine and the equipment into productive use. Attached is a letter from the potential lessor of the said land in Thika.

(c) Obtain all licenses from the relevant authorities, namely:- NEMA, Occupational Health and safety, Kiambu County Government.

(d) Take all appropriate insurance covers to protect the assets of the company Eldama Ravine Stones Limited.

(e) Hire an experienced manager to run the day to day operations of the business but overseas the business.

(f) Hire all the necessary staff (machine operators, loaders, drivers, cashiers etc).

(g) Deposit all sales proceeds in the account of Eldama Ravine Stone Limited held in CFC Stanbic Bank

(h) Provide initial start-up working capital a receipt and account for it properly.

(i) Mine stone and sell the same out of the site in Thika

(j) Accurately record the daily sales and keep the record for auditing.

(k) Accurately record the daily expenses including the expenses of leasing the land for auditing purposes.

(l) Using (j) and (k) above, to produce an income and Expenditure Account on a daily basis.

(m) File the income and Expenditure Accounts in Court at the end of each month and provide copies of the same to the Defendants and their advocates.

6. At end of six months, the net proceeds be distributed to the shareholders in the proportion of their shareholding. This distribution must take into account all initial costs borne by Udali Group Limited including the initial working capital.

7. When the main cause is over, all operations be handed over to Eldama Ravine Stones.

[3] The Defendants were apprehensive that the plaintiff's proposal for Re-operationalization of Eldama Ravine Stones Limited dated 9th March 2018 and filed on 15th March 2018 is for all intents and purposes prejudicial to the defendants in the following ways:

(a) It seeks to give the Plaintiff control of the 4th Defendants property:

(b) It seeks to settle the dispute while maintaining a case in court against the Defendants;

(c) It seeks to give one shareholder the control of the 5th Defendants and effectively give orders comparable to the final orders when the suit is subsisting;

(d) It substantially changes the status quo subsisting prior to instituting of the suit while the case has not been determined on merits.

[4] They were also apprehensive that the case is yet to be heard on merits and therefore proposed as follows:-

(a) The status quo before the institution of the suit be maintained. The equipment should thus be returned to the Diocese of Meru and in the custody of Eldama Ravine Stones limited with an order that the equipment be kept in safe custody. This is premised on the fact that the plaintiff and the 4th Defendant are separate legal entities. As such, the property of the 4th Defendant cannot be transferred from itself to the Plaintiff. Any use, lease, or otherwise operations of the 4th Defendant should only be secured through joint resolution of the two shareholders registered in court.

(b) The Directors of the 4th Defendant to agree to conduct meetings regularly and deposit their minutes and resolutions in court. Such meetings should consider and agree on operations and governance of the Company.

[4] The company subject of these proceedings is the 4th defendant. It is the owner of the machinery and equipment which is rotting away as a result of orders of court made in these proceedings between the members of the company. As a consequence, the company has been completely paralyzed by these feuding parties. It seems parties engage in selfish and insidious activities every time they have an opportunity to conduct the business of the company. And looking at the nature of matters complained of herein, the conduct of the company's affairs is in a manner that is prejudicial to the company and the interest of the members generally or of one of the members. I even doubt whether the company is discharging its statutory obligations, say, filing of statutory returns or convening statutory meetings. It is also doubtful who the natural directors of the company are. Such sad state of affairs put the company in peril and the law might just pounce on the company as well as its members and directors. The law is not helpless in such situation; the court has power to make orders of protection of the law, the company and or its members or some part thereof including regulating the conduct of the affairs of the company in the future or ordering the convening meeting of the company or directing the company to do or refrain from doing specified things etc. etc. See for instance section 780 of the Companies Act below:-

(1) A member of a company may apply to the Court by application for an order under [section 782](#) on the ground—

a) that the company's affairs are being or have been conducted in a manner that is oppressive or is unfairly prejudicial to the interests of members generally or of some part of its members (including the applicant); or

b) that an actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be oppressive or so prejudicial.

[5] The company herein is being prejudiced by the manner in which the members herein have conducted its business. The plaintiff submitted that the ideal situation would be to hand over the machinery in issue to the two shareholders to continue with operation, and discharge all the other duties of the company. But, as it was rightly submitted by the Plaintiff, parties are not prepared to resolve the stalemate. I agree with the plaintiff that the ideal situation should be to bring the company into operation. But, I also agree with the Defendants that giving the Plaintiff the control of the business of the 4th Defendant is prejudicial to them as this case is pending. Of significance is that, it has become impracticable for any of these members to conduct the affairs of the company for the benefit of the company. The company has been left to be and exists in total breach of the law. Thus, the need to cause appointment of suitable directors who are free from conflict of interest with the company to run the 4th defendant. The directors should be agreed upon by the parties and appointment be done at a meeting of the company. But as it is impractical to convene a meeting of the company for reason of these feuds- and perhaps lack of or diligent directors or officers of the company- I will tap from the power of court under section 280 of the Companies Act below:-

280 Power of Court to order general meeting to be convened

This section applies if for any reason it is impracticable—

a) *to convene a meeting of a company in any manner in which meetings of that company may be convened; or*

b) *to conduct the meeting in the manner required by the articles of the company or this Act.*

(2) *The Court may, either on its own initiative, or on the application—*

a).....

b).....

make an order requiring a meeting to be convened, held and conducted in any manner the Court considers appropriate.

(3) *If an order is made under subsection (2), the Court may give such ancillary or consequential directions as it considers appropriate.*

(4)

(5) *A meeting convened, held and conducted in accordance with an order under this section is taken for all purposes to be a meeting of the company properly convened held and conducted.*

[6] And, I order a general meeting to be convened for a particular purpose of appointing two or more suitable directors to conduct the affairs of **ELDAMA RAVINE STONES LIMITED**, the company and in particular:

1. *The machine and all the equipment (“the equipment”) to be released to the directors of ELDAMA RAVINE STONES LIMITED appointed in accordance with this order.*

2. *The said directors to take stock/inventory of all the equipment that will be handed over to them. This to include all the equipment still at the Consolata Mission Hospital and the equipment at the Runyenjes Police Station.*

3. *The inventory to be served on all the parties and to be filed in Court for accountability.*

4. *The equipment be used to generate income for both shareholders.*

5. *ELDAMA RAVINE STONES LIMITED through the directors appointed hereto to do the following:-*

(a) *Transport all the equipment to Thika at the cost of both members of the 4th Defendant Company. The cost shall be tabulated, recorded, receipted and disclosed to the Court and the parties by the directors.*

(b) *Rent a piece of land of five (5) acres, preferably in Thika to put the machine and the equipment into productive use. The directors to act prudently and diligently on this.*

(c) Obtain all licenses from the relevant authorities, namely:- NEMA, Occupational Health and safety, Kiambu County Government.

(d) Take all appropriate insurance covers to protect the assets of the company Eldama Ravine Stones Limited.

(e) Hire an experienced manager to run the day to day operations of the business but overseas the business.

(f) Hire all the necessary staff (machine operators, loaders, drivers, cashiers etc).

(g) Deposit all sales proceeds in the account of Eldama Ravine Stone Limited to be properly designated to be for purposes of this undertaking.

(h) Obtain initial start-up working capital from the shareholders of the 4th Defendant Company.

(i) Mine stone and sell the same out of the site in Thika

(j) Accurately record the daily sales and keep the record for auditing.

(k) Accurately record the daily expenses including the expenses of leasing the land for auditing purposes.

(l) Using (j) and (k) above, to produce an income and Expenditure Account on a daily basis.

(m) File the income and Expenditure Accounts in Court at the end of each month and provide copies of the same to the members of the company and their advocates.

(n) At end of six months, the directors shall inform the court and members of net proceeds of the business of the company and a declare in accordance with the Articles and Memorandum of Association of the 4th Defendant Company any distribution of profits or payment of dividends to the shareholders in the proportion of their shareholding.

[7] The meeting herein shall take place on 7th June 2018 at the registered office of **ELDAMA RAVINE STONES LIMITED**. Each party shall nominate one person- who shall not be a director of or closely associated with the companies herein which constitute the shareholders of- to be appointed a director of **ELDAMA RAVINE STONES LIMITED**. It is advisable that a third director be agreed upon and appointed in the said meeting. However, if parties cannot agree, two names- one by each member- nominated for appointment as the third director be forwarded to this court for appropriate action. It is so ordered.

Dated, signed and delivered in open court at Meru this 22nd day of May 2018

F. GIKONYO

JUDGE

In the presence of:

Mr. Mutegi advocate for Ayah for plaintiff

Udali Director present

Mr. Kiogora advocate for Owuor for defendants.

F. GIKONYO

JUDGE