



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL & ADMIRALTY DIVISION

MISCELLANEOUS CIVIL APPLICATION NO. 469 OF 2014

IN THE MATTER OF THE COMPANIES ACT, CAP 486, LAWS OF KENYA

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IN THE MATTER OF MENGO FARM LTD

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IN THE MATTER OF THE RECTIFICATION OF THE COMPANY REGISTER

ABDIKADIR AHMED SHEIKH.....1ST APPLICANT

MOHAMED ABDI FARAH.....2ND APPLICANT

-VERSUS-

EUNAH WAMUYU KARIUKI.....1ST RESPONDENT

REGISTRAR OF COMPANIES.....2ND RESPONDENT

JUDGMENT

1. The originating Notice of Motion was filed in Court by Abdikadir Ahmed shiekh and Mohamed Abdi Farah (Abdikadir and Mohamed respectively) on **26th September 2014**. The orders sought from the court in that motion are the rectification of the Register of the Company known as **Mengo Farm Limited**, Incorporation Number **C.5563 (Mengo Farm)**. The rectification which was sought is the deletion and removal of the name of Eunah Wamuyu Kariuki (**Wamuyu**) as director and/or shareholder of Mengo Farm and that the Register of Mengo Farm do reflect the shareholding and directorship structure as follows;

<i>Abdikadir Ahmed Sheikh</i>	<i>1 share</i>
<i>Mahammed Abdi Farah</i>	<i>1 share</i>
<i>Estate of Arthur Muna Wanguhu</i>	<i>1 share</i>
<i>Mafwabi Nandabi</i>	<i>No share</i>

BACKGROUND

2. There has been a long running tussel over the shareholding and directorship of Mengo Farm.

3. Mengo Farm was Incorporated on **8th July 1963** and was assigned Incorporation Number **C. 5563**. The intial subscribers were Abdi Farah Wais (1 share); Ahmed Muhamed Ali (1 share); and Arthur Muna Wanguhu (1 share). On the death of Arthur Muna on **24th December 1974**, Wafwabi Wasilwa Nandati was appointed Director with effect from **4th March 1980**. In that regard, **Form 203A**, the Notification of change of Directors and Secreteries was filed with the 2nd Respondent herein, the Registrar of Companies. Rahman Elmi Ahmed was appointed as a

Director of Mengo Farm with effect from **2nd October 1983**. This followed the death of Abdi Farah Wais. Again **Form 203A** in respect to that change of directorship was filed with the 2nd Respondent.

4. The Mengo Farm's Annual Returns with the 2nd Respondent reflected its shareholding and directorship as follows;

“Rahman Elmi Ahmed (1 share); Abdi Farah Wais (1 share); and the estate of Arthur Mwanguhu (1 share).”

5. The records of the 2nd Respondent reveal that by **October 1999**, the Company file of Mengo Farm was reported as missing. The 2nd Respondent wrote a letter on **12th October 1999** informing the directors of Mengo Farm that temporarily file had been opened.

6. The Annual Returns of mengo Farm filed by Wamuyu as at **31st December 1989**, in the temporarily file, show the following shareholding/directorship:

“Eunah Wamuyu (220 shares); and William Tom mboche (210 shares)”

7. Another Annual Return filed by William Tom Mboche on **15th April 1989**, reflected the shareholding as follows;

“Rahman Elmi Ahmed(1 share); Eunah Wamuyu (1 share); and William Tom Mboshe (one share)”

8. The subsequent annual return interchangeably shows shareholders to be Wamuyu and Mboche While other times they include the name of Rahman Elmi Ahmed.

9. It does not take much thought to note that the shareholding of Mengo Farm began to include the names of Wamuyu when the company's file was reported as missing at the Registrar of Companies office.

10. In the centre of tussle is 702 hacters of land being **Title L.R. No. 11473 in Trans Nzoia** which is registered in the name of Mengo Farm.

ANALYSIS AND DETERMINATION

11. As I have considered all the Affidavit evidence, it has become clear to me that, what is required of me in this action is to enforce the **Judgment of Justice Ole Keiuwa**, as he then was, in **Nairobi Milimani Civil Case No. 34 of 1998** delivered on **6th August 1998**. The orders made in that Judgment are contained in the extracted Decree which I will reproduce hereunder;

“ REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL COURT

CIVIL CASE NO. 34 OF 1998

MENGO FARM LIMITED.....PLAINTIFF

-VERSUS-

EUNA WAMUYU KARIUKI.....DEFENDANT

DECREE

CLAIM FOR:

a) An injunction restraining the Defendant from acting or holding herself out as a director or shareholder of the Plaintiff Company or from otherwise intermeddling in the company's business or management of its affairs;

b) An injunction to restrain the Defendant by herself, her servants or agents or otherwise howsoever from trespassing on that piece of land known as L.R. 11437 Trans Nzoia;

c) Delivery by the Defendant to the Plaintiff of the Certifcte of Tiltle known as L.R. 19846 in respect of the said parcel of land L. R. 11437 and all other documents and assets of the Plaintiff company;

d) Damages and assets of the Plaintiff company;

e) Any other relief or reliefs that this Honourable Court may deem just to grant.

This suit coming up for formal proof on the 30th day of July 1998 and for judgment on this 6th day of August, 1998 before the Honourable Mr. Justice Ole Keiwa AND UPON HEARING Counsel for the Plaintiff in the presence of the Defendant IT IS ORDERED:

(1) That the Defendant do pay to the Plaintiff the sums of Kshs. 10,081,000/- as more particularly set forth hereunder until payment in full;

PARTICULARS

Award on trespass	Kshs. 1,000.00
Award on General damages	<u>Kshs. 10,080,000.00</u>
TOTAL	<u>Kshs. 10,081,000.00</u>

(2) THAT a permanent injunction be and is hereby issued restraining the Defendant from acting or holdig herself out as a director or shareholder of the Plaintiff company of from otherwise intermeddling in the company's business or management of its affairs;

(3) THAT a permanent injunction be and is hereby issued restraining the Defendnat by herself, her servants or agents or otherwise howsoever from trespassing on that piece or parcel of land known as L.R. No. 11437 Trans Nzioa;

(4) THAT the Defendant be and is hereby ordered to deliver the certificate of title to the Plaintiff forthwith pertaining to L. R. No. 11437;

(5) THAT the Defendant do pay the Plaintiff its cost of the suit to be taxed and certified by the Taxing Master of this Honourable Court.

GIVEN under my hand and seal of the Court at Nairobi this 6th day of August, 1998.

ISSUED as Nairobi this 22nd day of October 1998.

BY THE COURT

DEPUTY REGISTRAR

SENIOUR DEPUTY REGISTRAR

HIGH COURT OF KENYA MILIMANI NAIROBI

12. Wamuyu, by that Judgment, was permanently restrained from acting or holding herself as a director or shareholder of, or intermeddling with, Mengo Farm. No evidence has been adduced by Wamuyu that the said Judgment was appealed against or was vacated. It therefore is a valid Judgment, to date, of the High Court of Kenya.

13. There is no basis for the contention of Wamuyu that she is a shareholder of Mengo Farm. Such a claim cannot be supported by letters written by the 2nd Respondent; by the County Council of Nzoia or by payments for land rates made to the County Council of Nzioa. The claim is also not supported by the *Decree* issued in *Nairobi HCCC No. 3574 of 1989*. In that case Judgment was entered in the following terms after the Defendants failed to file a defence in the action;

“ REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 3574 OF 1989

1. MENGO FARM LTD)
2. EUNAH WAMUYU KARIUKI).....PLAINTIFFS
3. WILLIAM TOM MBOCHE)

-VERSUS-

1. MUROKI ESATES LTD.)

2. ABDI WAIS).....DEFENDANT

DECREE

CLAIM FOR:

- a) i) Permanent injunction restraining the first Defendant, its Agents or servants from trespassing, cultivating or alienating the suit premises.
- ii) Order that the Defendant by themselves, their servants and/or Agents or anybody claiming under them to be evicted from the suit premises.
- b) The title of the suit land be returned by the second defendant to the Directors of first Plaintiff.
- c) The Defendant be prohibited from dealing with the suit land.
- d) The costs of this suit to be paid by the Defendants to the Plaintiffs.
- e) Any other relief this honourable court may deem fit to grant.

THIS SUIT coming for formal proof on 20th day of November, 1990 and for judgment on 29th day of November, 1990 before the Honourable Mr. Justice Tank in the presence of the Counsel for the Plaintiffs and in the absence of the Defendants although duly served IT IS ORDERED.

- 1. The first Defendant, its Agents or Servants be and are hereby restrained from trespassing cultivating or alienating the suit premises land parcel No. 11437 1R 19846.
- 2. THAT the Defendants by themselves, their Servants and/or Agents or anybody claimed under them be and are hereby evicted from the suit premises namely parcel No. 11437 1R 19846.
- 3. THAT the second Defendant Abdi Farah Wais be and is hereby ordered to return the Title deed of the suit premise namely parcel No. 11437 1R 19846 to the Plaintiffs.
- 4. THAT the Defendants be and are hereby prohibited from dealing with the suit land No. 11437 1R 19846.
- 5. THAT the defendants do jointly and severally pay to the Plaintiffs the costs of this suit to be taxed and certified by the taxing officer of this court.

GIVEN under my hand and seal of the Court at Nairobi this 29th day of November 1990.

ISSUED at Nairobi this 30th day of November 1990.

DEPUTY REGISTRAR

HIGH COURT KENYA AT NAIROBI “

- 14. That Decree related to the irremovable property registered in the name of Mengo Farm. It has no bearing on the shareholding of Mengo Farm. It is important to note that the judgment in that case was against an entity and a person who are not parties in the present case.
- 15. Having made a finding that the Court through the judgment of *Justice Ole keiwa* in *Nairobi Milimani HCCC 34 of 1998*, which permanently restrained Wamuyu from acting or holding herself as director/shareholder of Mengo Farm, there is only but one issue requiring determination in this matter, that is, does this Court have power to order rectification of the Register of Mengo Farm?
- 16. My response to that issue is in the positive. The applicable law that empowers this court to order rectification of Company's Register is *Section 118* of the *Companies Act Cap 486* now repealed by the *Companies Act 2015*. The reason I will apply the law under *Cap 486* is because this case was filed when *Cap 486 was the applicable law* – see *section 23* of the *Interpretation and General Provisions Act cap 2*. That *section 118 of Cap 486* empowers this Court to order rectification of a Company's Register. The power to rectify a Company's Register was discussed in the case of *Suryakant Bhailabahi Patel & 2 others vs Moses Sekenya Kulundu & 4 others [2014] eKLR as follows:*

Therefore, the first consideration in the exercise of discretion under section 118 of the Companies Act is; the procedure is a summary process and should be invoked only in clearest of cases. See the case of Prab Hulal Tejpa Haria & Another -vs- Pravin Chandra Meghji Dodhia & 2 others [2007] eKRL, where Warsme J (as he then was) expressed himself that;

“In my view the summary powers of the court can be invoked in plain and clear cases where there is no need for a trial.....The powers under section 118 of the Company’s Act cannot be invoked when there is a real and complicated dispute as to the real interests of the parties.”

17. That case of *Suryanant Bhailabahi Patel & 2 others vs Moses Sekenya Kulundu & 4 others [2014] eKLR*, the Court made a reference to *Halsbury’s law of EnglnD 4th Edition vol. 7 (1) para 372* as follows;

“The power to rectify has been exercised where there has been misrepresentation in the prospectus; where it is expedient to have an order which will bind all the shareholders and effectually bar any subsequent application for restoration of a name struck out by the directors; where shares have been illegally allotted at a discount; where the application for shares has been made in the name of a person, as, for example, an underwriter, without his authority; where there is no valid allotment of shares; or the allotment is not made within a reasonable time or is irregular; where transfer of shares has been improperly registered or registration has been refused; where there are joint holders of shares who wish to divide the shares so held into two parts with their names entered in the register in respect to each part in a different order; where the company puts on its register matters which are not required by the statute; in order to set right allotments of shares which have been issued as fully paid without a proper contract being filed; and where an overseas company was entered in the register without the permission of the Treasury, which was at the time required.”

18. There is sufficient evidence before Court that Wamuyu, in view of the Judgment in **HCCC No. 34 of 1998**, has no entitlement to have her name reflected as director or shareholder of Mengo Farm. The prayer for rectification is therefore merited.

19. Accordingly the judgment of this Court is that, the register of Mengo Farm Ltd Incorporation **No. C. 5563** shall be rectified by the Registrar of the Companies by reflecting the following as the shareholders:-

Abdikadir Ahmed Sheikh	1 share
Mahammed Abdi Farah	1 share
Estate of Arthur Muna Wanguhu	1 share
Mafwabi Nandabi	No share

20. The Applicants are awarded the cost of this suit to be paid by Eunah Wamuyu Kariuki. It is so ordered.

DATED, SIGNED and DELIVERED at NAIROBI this 30th day of October, 2018.

MARY KASANGO

JUDGE

Judgment read and delivered in open court in the presence of:

Court Assistant.....Sophie

..... for the Applicants

..... for the Respondents

MARY KASANGO

JUDGE