



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

CIVIL APPEAL NO. 101 OF 2014

BOG CHEBUT TEA FACTORY LTD.....APPELLANT

VERSUS

JOHANA KIPKORIR CHULAI.....RESPONDENT

*(Being an Appeal from the Ruling of Honourable B. Mosiria (Principal Magistrate) delivered on 17th July, 2014 in the Principal Magistrate's Court at Kapsabet in **PMCC No1 of 2014**)*

JUDGEMENT

1. The Appeal herein arises from the Ruling of Hon. Mosiria in **Kapsabet PMCC NO. 1 of 2014 JOHANA KIPKORIR CHULAI =VS= BOG CHEBUT TEA FACTORY** dated 17th July, 2014 wherein the Respondent was granted a temporary order of injunction restraining the Appellant from conducting elections.

2. The Appellant being aggrieved by the said ruling has lodged five grounds of appeal as follows:-

- (a) That the learned Magistrate erred in fact and law by failing to find that she had no jurisdiction to handle the matter.*
- (b) That the learned magistrate erred in law and fact by failing to find that the Appellant had been wrongly enjoined.*
- (c) That the learned magistrate erred both in law and fact by granting a temporary order of injunction against the Appellant restraining it from conducting elections.*
- (d) That the learned Magistrate erred both in law and fact in failing to consider the Appellant's submissions tendered in court.*
- (e) That the learned Magistrate is in the circumstances unfair and unjust.*

The Appellant therefore sought for the following reliefs:-

- (a) The ruling and order of the lower court be set aside and substituted with a proper finding of this Honourable court.*
- (b) The Appellant be awarded the costs of the Appeal.*

3. The Appeal was canvassed by way of oral submissions. However, it is only Counsel for the Appellant who appeared in court and made oral submissions while Counsel for the Respondent did not turn up despite hearing notices having been dispatched. Mr. Ndege learned Counsel for the Appellant submitted on only one ground namely whether the trial court had jurisdiction to grant the orders sought in the Application dated 6/1/2014. Learned Counsel for the Appellant submitted that matters to do with companies are governed by the Companies Act Cap 486 Laws of Kenya and that by Section 2 thereof jurisdiction is with the High Court and not subordinate courts: Counsel further submitted that the trial court overruled the Appellant's preliminary objection regarding the lack of jurisdiction by the said court which proceeded to grant an order of injunction stopping elections which had been scheduled and as a result the said elections have not been held to date. The counsel relied on the case of **DAVID RANDU =VS= MALINDI WATER & SEWERAGE CO, LTD MSA INDUSTRIAL COURT NO. 110 OF 2012** where the court held that Magistrate courts lack jurisdiction to handle Company matters.

4. I have considered the submissions presented. The record of Appeal shows that the Respondent had approached the trial court vide an Application filed under certificate of urgency dated 6/1/2014 seeking for an order of injunction restraining the Appellant together with its agents, servants, nominees from conducting any election so as to elect a director for the Appellant's Lessos Division. The Appellant's Counsel duly filed Grounds of Opposition and after the matter was heard interpartes, the trial court proceeded to grant the order sought by the Respondent. This then precipitated the present appeal. I find the only issue for determination in this appeal is whether or not the trial court had jurisdiction to entertain the matter.

5. The Appellant herein has been described vide paragraph 2 of the Respondent's Plaintiff dated 6/1/2014 as a Company registered and incorporated in the Republic of Kenya engaged in the business of buying and processing green leaf tea in Nandi County. From the aforesaid description, it is clear that indeed the Appellant is an entity incorporated under the Companies Act Cap 486 Laws of Kenya. Pursuant to Section 2 of the said Act the description of courts is indicated as follows:-

'The Court'..... means the High Court

From the above description, it is quite clear that Section 2 of the Companies Act Cap 486 Laws of Kenya grants to the High Court the exclusive jurisdiction to determine all disputes relating to the business and affairs of Companies. The subordinate courts have not been given jurisdiction to entertain any such matters by the Companies Act. Hence the filing of the matter before the lower court was improper in the circumstances due to the lack of jurisdiction of that court. The court of Appeal in the case of **OWNERS OF MOTOR VESSEL "LILLIANS" =VS= CALTEX OIL (K) LTD [1989] KLR 1** rendered itself thus:-

"It is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction."

The issue of jurisdiction was properly raised by the Appellant's Counsel before the trial court. However it seems the learned trial magistrate did not address her mind correctly on the issue of jurisdiction and fell into error when she made the following finding:-

"..... they were correctly brought to court if anything the Defendant Company is vicariously liable for the actions of its employees. There is no prejudice to be suffered by Defendant on bringing this suit against the BOG or if there is any prejudice to be suffered that has not been demonstrated or even said that notwithstanding the issue of joinder or misjoinder of parties cannot prevent substantive justice from being rendered. I find the application dated 7/1/2014 to have merit and I do allow the same as prayed."

With respect to the learned trial magistrate, she failed to appreciate the clear provisions of Section 2 of the Companies Act Cap 486 Laws of Kenya which grants to the High Court the exclusive jurisdiction to determine all disputes relating to the business and affairs of companies. The learned trial magistrate ought to have accepted the Appellant's grounds of Objection and proceed to hold that the court lacked jurisdiction and to strike out the Respondents suit at that stage.

6. For the foregoing observations, it is the finding of this court that the Appellant's Appeal has merit. The same is allowed with the following orders:-

(a) The ruling and order of the trial court dated 17/7/2014 is hereby set aside and substituted therefor with an order striking out the Respondent's suit.

(b) Each party to bear their costs of this appeal and in the lower court.

Orders accordingly.

D.K. KEMEI

JUDGE

Dated and Delivered at **ELDORET** this 22nd day of **November, 2018.**

STEPHEN GITHINJI

JUDGE