

IN THE HIGH COURT OF KENYA AT MURANG'A

MISC PETITION NO 2 OF 2014

1. LUCY NYAKIAGO MAINA

2. JOHN MUKUI MAINA.....PETITIONERS

VERSUS

1. KENYA TEA DEVELOPMENT AGENCY

2. HILLARY MATHENGE

3. KANYENYA-INI TEA FACTORY CO LTD.....RESPONDENTS

R U L I N G

1. The petition herein challenges the election of one **Peter Maina Gachuhi** as a director representing the Ngoe-in Tea Catchment Zone in the board of directors of the 3rd Respondent, Kanyenya-ini Tea Factory Co Ltd. It is not immediately clear why the said Peter Maina Gachuhi was not joined in the proceedings.

2. The said election is challenged upon the ground of various alleged irregularities set out in the petition. The petition is brought by the two Petitioners on their own behalf and on behalf of “all shareholders/tea growers of Kanyenya-ini Tea Company Limited”. The shareholders/tea growers are not named.

3. Four (4) replying affidavits were filed in response to the petition. They are sworn by **Meshllam Mathenge, John Mwangi, Mike Nathan Ngugi** and **Jasper Murithi M'Raiji**.

4. Meshllam Mathenge has described himself as an employee of the 1st Respondent (Kenya Tea Development Agency) as “the Factory Unit Manager of Ragati Tea Factory Limited”; John Mwangi as the Deputy Presiding Officer at Ngoe-ini Polling station of Ngoe-ini Electoral Zone “in the just concluded KTDA directors’ elections”; Mike Nathan Ngugi as Deputy Presiding Officer at Gichumi Polling Station of Ngoe-ini Electoral Zone “in the just concluded KTDA directors’ elections,” and Jasper Murithi M'Raiji as an employee of the 1st Respondent “who is assigned the duties of the Field Services Coordinator of the 3rd Respondent”.

5. In all the replying affidavits all the irregularities alleged in the petition are fully denied.

6. On 15/07/2015 the court directed that the petition be heard by way of submissions on the affidavits then before the court, and further that the parties may file and exchange written submissions. The petition was then fixed for hearing on 18/01/2016. On that date the judge was on his annual leave.

7. When the matter came up next for hearing on 04/07/2016 there was no appearance for the Petitioners. Learned Counsel for the Respondents informed the court that she had not been served with any submissions by the Petitioners that the Respondents could respond to. She nevertheless undertook to file submissions on their behalf. The Respondents’ submissions were filed on 23/08/2016.

8. The matter came up for highlighting on 27/09/2016. Again there was no appearance for the Petitioners, and no submissions had been filed or served on their behalf. In these circumstances learned counsel for the Respondents submitted that the Petitioners had not prosecuted their petition, and that therefore it ought to be dismissed with costs.

9. The Petitioners’ failure to file written submissions or to appear in court either in person or by counsel

at the hearing of the petition is tantamount to failure to prosecute the same. I need not say more. The petition dated 20/01/2014 is hereby dismissed with costs for want of prosecution. It is so ordered.

DATED AND SIGNED AT MURANG'A THIS 23RD DAY OF MARCH 2017

H P G WAWERU

JUDGE

DELIVERED AT MURANG'A THIS 24TH DAY OF MARCH 2017