



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT VOI**  
**COMMERCIAL CASE NO 8 OF 2015**

HARUN MNJAU.....PLAINTIFF

VERSUS

SAGALLA RANCHERS LTD.....1<sup>ST</sup> DEFENDANT

PETER M. NGUTA.....2<sup>ND</sup> DEFENDANT

AND

SAGALLA RANCHERS LIMITED.....1<sup>ST</sup> AFFECTED PARTY

MR ELIUD MWAMUNGA.....2<sup>ND</sup> AFFECTED PARTY

RAPHAEL MBINGA.....3<sup>RD</sup> AFFECTED PARTY

ABDISTAR HAJI.....4<sup>TH</sup> AFFECTED PARTY

**RULING**

**INTRODUCTION**

1. The Plaintiff's Notice of Motion application dated 30<sup>th</sup> January 2016 and filed on 2<sup>nd</sup> February 2016 was brought pursuant to the provisions of Article 159 of the Constitution of Kenya, 2010, Order 40 Rule 3 of the Civil Procedure Rules, 2010, Sections 1A, 1B and 3A of the Civil Procedure Act Cap 21 and all other enabling provisions of the law. Prayer Nos (1) and (2) therein were spent. It sought the following remaining orders:-

**1. Spent**

**2. Spent**

**3. THAT the said Sagalla Ranchers Ltd, Eliud T. Mwamunga, Raphael Mbinga and Abdistar Haji be committed to prison for a period of upto six (6) months for contempt of the Court order issued on 15<sup>th</sup> January 2016.**

**4. THAT Sagalla Ranchers Ltd, Eliud T. Mwamunga, Raphael Mbinga and Abdistar Haji personal properties be sequestered for the contempt of the Court order issued herein on 15<sup>th</sup> of January, 2016.**

**5. THAT the Resolutions made at the said meeting on the 16<sup>th</sup> January, 2016 be declared null and void for all intents and purposes as the same were made in violation of the said Court Order issued on 15<sup>th</sup> January, 2016.**

**6. THAT until Sagalla Ranchers Ltd, Eliud T. Mwamunga, Raphael Mbinga and Abdistar Haji purge their aforesaid contempt of Court they be denied any right of audience in this Court or any other Court.**

**7. THAT the costs of this Application be provided for.**

2. The Order (hereinafter referred to as “the Order”) in contention was issued by Angote J on 15<sup>th</sup> January 2016. The same restrained the Defendants, their agents, employees and/or servants from holding the so called Annual General Meeting on 16<sup>th</sup> January 2016 as advertised in the Daily Nation Newspaper of 22<sup>nd</sup> December 2015 or on any other date until 9<sup>th</sup> February 2016 when the matter was to be heard *inter partes*.

3. This application appeared to have been filed after the Contemnors purported to hold an Annual General Meeting. Notably, in its Ruling of 18<sup>th</sup> December 2015, this court had directed as follows:-

**1. The AGM scheduled for 19<sup>th</sup> December 2015 is hereby cancelled. However, to facilitate the holding of the next 1<sup>st</sup> Defendant’s AGM, the court hereby directs that the 1<sup>st</sup> Defendant shall cause to be issued a valid Notice of the 2<sup>nd</sup> AGM, which notice it shall cause to be published in the Daily Nation and The Standard within the next seven (7) days from the date of this Ruling.**

**2. The court wishes to warn all person(s) that any person(s) who shall act in any unlawful manner to disrupt the said AGM once lawfully constituted from being held and/or to cause it not take place for whatever reason without any lawful or reasonable cause will be in contempt of this court’s orders.**

**3. Bearing in mind that the 1<sup>st</sup> Defendant did not annex proof of advertisement of the Notice to hold the AGM that is scheduled to be held on 19<sup>th</sup> December 2015 as it had alleged and the fact that the Plaintiff has not been keen to prosecute his case since inception, the court hereby directs that each party shall bear its own costs.**

## **LEGAL ANALYSIS**

4. The Plaintiff filed his Written Submissions dated 26<sup>th</sup> February 2017 in respect of the present application on 29<sup>th</sup> February 2017. The Defendants’ and Affected Parties’ Written Submissions were dated 15<sup>th</sup> March 2017 and filed on 16<sup>th</sup> March 2017.

5. In his Written Submissions, the Plaintiff argued that the Defendants and the Affected Parties were aware of the order by Angote J as they were duly served with the same but that notwithstanding, they purported to hold an Annual General Meeting on 16<sup>th</sup> January 2016, which he contended was a contempt of the said court order. It relied on several cases to buttress its submissions.

6. On the other hand, the Defendants and Affected Parties admitted to having been served with the said Order. However, they were categorical that the said Order did not bar members or directors from holding any other meeting or consulting on matters affecting the 1<sup>st</sup> Defendant.

7. Before this court could delve into the substantive issues that had been raised in the Plaintiff’s application, it noted that the Defendants and the Affected Parties raised an issue regarding the validity of the said Court order. It therefore found it prudent to first address the said issue as a preliminary issue as it

had the potential of rendering the Plaintiff's present Notice of Motion application incompetent. Notably, the Plaintiff did not respond to the Defendants and Affected Parties' submissions in this regard.

8. The Defendants and the Affected Parties argued that the order granted by Angote J was invalid and a nullity in law as he was a judge assigned to handle Environment and Land matters. They submitted that the said judge lacked authority to issue the said order and he acted outside the realm of his jurisdiction. It relied on the case of **Gatirau Peter Munya vs Dickson Mwenda Kithinji & 2 Others [2014] eKLR** in this regard.

9. In addressing this issue, this court had regard to the provisions of Article 162(2) (b) of the Constitution of Kenya, 2010 that stipulate as follows:-

**“Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to the environment and the use and occupation of, and title to, land.”**

10. The said provision is very straight forward and in that regard this court could not have agreed more with the Defendants and the Affected Parties that Angote J did not have jurisdiction to grant substantive orders relating to the affairs of 1<sup>st</sup> Defendant. Indeed, this court's position was further fortified by the decision of the Supreme Court in the case of **Republic v Karisa Chengo & 2 others [2017] eKLR** where it held as follows:-

**28. A particular Judge undertook to perform stewardship of the particular office in respect of which the Judge took the oath, and not of a different office. The formal action-chain taken by relevant constitutional agencies, from advertisement, to appointment, and to oath-taking, was all linked, in each case, to a specific Court. The Judges did not take a general oath as superior Court Judges but as High Court Judges, or as Specialised Court Judges, or as Court of Appeal Judges, or as Supreme Court Judges. If indeed the Constitution intended that Judges should swear oaths of allegiance to all superior Courts in general, then it would have expressly stated so; and if a common service-arrangement between the High Court and the specialised Courts existed, then it would be possible, by dint of sheer administrative directions, to designate Judges in the latter category, from time to time, to serve, say in the Family, Criminal, Commercial, or Civil Division, of the High Court.**

**29. Although the High Court and the specialised Courts were of the same status, they were different Courts. It followed that the Judges appointed to those Courts exercised varying jurisdictions, depending upon the particular Courts to which they were appointed. Statutes regulating specialised Courts limited the Jurisdiction of specialised Courts to the matters provided for in those statutes. Further, article 165(5) of the Constitution prohibited the High Court from exercising jurisdiction in respect of matters reserved for the exclusive jurisdiction of the Supreme Court and the Specialised Courts.**

**30. Angote, J. was appointed as a Judge of the Environment and Land Court, and not of the High Court, and therefore had no jurisdiction to determine criminal appeals. Gazette Notice No. 13601 of October 4, 2013, by which the former Chief Justice empanelled him to sit and determine the criminal appeals in question, was unlawful and unconstitutional.**

11. Without belabouring the point as this court is bound by the decision of the Supreme Court, this court had no difficulty in respectfully finding that Angote J lacked the jurisdiction or authority to grant the order of 15<sup>th</sup> January 2016. As the same was a nullity in law, the Defendants and the Affected Parties could not have been said to have been in contempt of the same. Indeed, there can be no contempt of an invalid or illegal order.

## **DISPOSITION**

12. For the foregoing reasons, the upshot of this court's ruling was that the Plaintiff's Notice of Motion application dated 30<sup>th</sup> January 2016 and filed on 2<sup>nd</sup> February 2016 was not merited and the same is

hereby dismissed with costs to the Defendants and the Affected Parties.

13. It is so ordered.

**DATED at DELIVERED at VOI this 29<sup>TH</sup> day of JUNE 2017**

**J. KAMAU**

**JUDGE**