



REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI

CIVIL CASE NO. 230 OF 2017

STEPHEN MAINA GITHIGA.....1<sup>ST</sup> PLAINTIFF  
FRANCIS M MARK.....2<sup>ND</sup> PLAINTIFF  
ESTON G. GIKOREH.....3<sup>RD</sup> PLAINTIFF  
PETER M. KINYUA.....4<sup>TH</sup> PLAINTIFF

- V E R S U S -

GEOFFREY CHEGE KIRUNDI.....1<sup>ST</sup> DEFENDANT  
JOHN NGAII KARIRI.....2<sup>ND</sup> DEFENDANT  
CHRISTOPHER MWANGI KIOI.....3<sup>RD</sup> DEFENDANT  
BERNARD KIRAGU KIMANI.....4<sup>TH</sup> DEFENDANT

**RULING**

1. The subject matter of this ruling is the motion dated 22.11.2017 taken out by Stephen Maina Githiga, Francis M. Mark, Eston G. Gikoreh and Peter M. Kinyua, being the 1<sup>st</sup>, 2<sup>nd</sup> 3<sup>rd</sup> and 4<sup>th</sup> plaintiffs respectively. In the aforesaid motion, the plaintiffs sought for the following orders inter alia:

**1. Spent.**

***2. Geoffrey Chege Kirundi, John Ngaii Kariri, Christopher Mwangi Kioi and Bernard Kiragu Kamau, being the 1<sup>st</sup> to 4<sup>th</sup> defendants be summoned to court to show why they should not be cited for contempt and be committed to prison for such period of time not exceeding six months.***

***3. In the alternative, Geoffrey Chege Kirundi, John Ngaii Kariri, Christopher Mwangi Kioi and Benard Kiragu Kamau, being the 1<sup>st</sup> to 4<sup>th</sup> defendants be summoned to court to show cause why they should not be cited for contempt and be liable to the payment of a fine not exceeding kshs.200,000.00***

***4. Geoffrey Chege Kirundi, John Ngaii Kariri, Christopher Mwangi Kioi and Benard Kiragu Kamau, being the 1<sup>st</sup> to 4<sup>th</sup> defendants be summoned to court to show cause why they should not***

***be cited for contempt and be liable to the payment of a fine not exceeding ksh.200,000.00 and be committed to prison for such a period of time not exceeding six months.***

**5. Spent**

***6. Pending the hearing and determination of the suit herein, the court be pleased to issue an order restraining the 1<sup>st</sup> to 4<sup>th</sup> defendants whether by themselves, their employees, officers agents or any other person acting under their authority or in any manner whatsoever from the implementation of any resolutions passed by the purported Annual General Meeting conducted by the 1<sup>st</sup> to 4<sup>th</sup> defendants on 17<sup>th</sup> November, 2017.***

2) The aforesaid motion is supported by the affidavits of Messrs Stephen Maina Githiga, Joseph Mureithi, Josiah Ndegwa and Cynthia Sagini. When served with the motion, Geoffrey Chege Kirundi, John Ngaii Kariri, Christopher Mwangi Kioi and Benard Kiragu Kimani, the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants filed the replying affidavits of Messrs Geoffrey Chege Kirundi and Christopher Mwangi Kioi to oppose the motion. The 3<sup>rd</sup> respondent also filed grounds of opposition to resist the application. When the motion came up for inter partes hearing, learned counsels were invited to make oral submissions.

3) I have considered the grounds stated on the face of the motion plus the facts deponed in the affidavits filed in support and against the application. I have also taken into account the grounds of opposition filed by the 3<sup>rd</sup> defendant and the authorities cited by learned counsels from both sides. It is the submission of Mr. Ohaga, learned advocate for the plaintiffs that in the afternoon of 16.11.2017 this court issued the following orders *inter alia*:

***i. THAT an interim order of injunction be and is hereby issued restraining the 1<sup>st</sup> to 4<sup>th</sup> defendants, whether by themselves, their employees, officers agents or any person acting under their authority or in any other manner whatsoever from the publication, circulation and use of the plaintiffs' names and photographs on the false and unauthorised AGM booklet which contains the annual reports and financial statements of Kiru Tea Factory Company Limited for the year ended 30<sup>th</sup> June, 2017.***

***ii. THAT an interim order of injunction be and is hereby issued restraining the 1<sup>st</sup> to 4<sup>th</sup> defendants, whether by themselves, their employees, officers agents or any person acting under their authority or in any other manner whatsoever from the publication, circulation and use of the false and unauthorised AGM booklet which contains the annual reports and financial statements of Kiru Tea Factory Company Limited for the year ended 30<sup>th</sup> June, 2017***

***iii. THAT an interim order of injunction be and is hereby issued restraining the 1<sup>st</sup> to 4<sup>th</sup> defendants, whether by themselves, their employees, officers agents or any person acting under their authority or in any other manner from the publication, circulation and use of the plaintiffs' names and photographs on the false and unauthorised AGM booklet which contains the annual reports and financial statements of Kiru Tea Factory Company Limited for the year ended 30<sup>th</sup> June, 2017***

4) The learned advocate also stated that at about 6.40pm on 16.11.2017 he sent by email a message informing all the defendants and the factory manager of the issuance of this court's orders and to ensure that they complied with the orders. Mr. Ohaga further averred that at around 7.00pm of the same date he had a tele-conversation with the 3<sup>rd</sup> defendant and he informed him of the existence of the court orders. The plaintiffs' advocate further stated that at 9.50pm Cynthia Sagini, the legal officer at KTDA Management Services (KTDA MS) called Bernard Kiragu, the 4<sup>th</sup> defendant and notified him of the existence of the court orders. Mr. Ohaga also averred that at around 9.00am on 17.11.2017 the 1<sup>st</sup> and 2<sup>nd</sup> defendants were handed a print out of the plaintiffs' advocates letter dated 16.11.2017 by Mr. Josiah Ndegwa, the factory manager. It is further stated that at about 9.30am on 17.11.2017, the 1<sup>st</sup> defendant in company of the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants with two other directors of Kiru Tea Factory Co. Ltd

proceeded to circulate and use unauthorised and false AGM booklets which contain the Annual Reports and Financial Statements for the year ended 30.6.2017 in disregard of this court's order issued on 16.11.2017. It is the submission of the plaintiffs' advocate that despite having knowledge and having been served with the court orders the defendant proceeded to publish, circulate and use the plaintiffs' names and photographs on the false and unauthorised AGM booklets which contains the annual Reports and Financial Statements of Kiru Tea Factory Co. Ltd for the year ended 30.6.2017.

5) This court was further informed that the 4<sup>th</sup> defendant was present at the purported AGM held on 17.11.2017 and proceeded to read out the notice convening the AGM from the booklet in wilful disobedience of the court order prohibited the use of the false and unauthorised AGM booklet at the general meeting of 17.11.2017. It is argued that the court order was clear and unambiguous.

6) Mr. Karuga, learned advocate appearing for the 3<sup>rd</sup> defendant, urged this court to dismiss the motion. The learned advocate pointed out that the 3<sup>rd</sup> defendant, an external auditor with Kiru Tea Factory Co. Ltd, is a victim of a fight between the plaintiffs and defendants as directors of Kiru Tea Factory Co. Ltd. He stated that the 3<sup>rd</sup> defendant's role was limited to preparing the accounts and auditors' reports which exercise is done before the AGM is held. Mr. Kiragu pointed out that the 3<sup>rd</sup> defendant prepared and filed his report on 5.10.2017 and transmitted the booklets to the factory directors to utilise during the AGM. The 3<sup>rd</sup> defendant further stated that he is not involved in the publication, circulation and use of the booklets. The 3<sup>rd</sup> defendant further stated that when he received the email from Mr. Ohaga he contacted Mr. Geoffrey Chege Kirundi who informed him that he was not aware of the existence of the court order. The 3<sup>rd</sup> defendant stated that he did not attend the AGM because he was not a director and in any case he was not invited to attend.

7) Mr. Muite, Senior Counsel, appeared for the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> defendants. The learned senior counsel pointed out that the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> defendants could not undo what had already taken place. He stated that booklets complained of were printed much earlier before the orders of 16.11.2017 were issued. The 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> defendants stated that they attended the A.G.M of Kiru Tea Factory Co. Ltd when the booklets complained of had been approved and distributed. Mr. Muite further argued that in this age of fake news there was need to serve by personal service and in any case there is no guarantee that the defendants go through their emails on a daily basis. The learned senior counsel further pointed out that the printing and circulation of the booklets were authorised by the directors. The defendants also submitted that by 10.55am on 17.11.2017 the A.G.M had concluded hence the process servers effected personal service after what was sought to be injuncted had taken place. In short it was the submission of Mr. Muite that there was no wilful disobedience of the court orders.

8) Having considered the material placed before this court and the rival submissions presented by learned counsels appearing in this matter, it is not in dispute that this court issued the following exparte orders pursuant to the motion dated 16.11.2017

***a) THAT an interim order of injunction be and is hereby issued restraining the 1<sup>st</sup> to 4<sup>th</sup> defendants, whether by themselves, their employees, officers agents or any person acting under their authority or in any other manner whatsoever from the publication, circulation and use of the plaintiffs' names and photographs on the false and unauthorised AGM booklet which contains the annual reports and financial statements of Kiru Tea Factory Company Limited for the year ended 30<sup>th</sup> June, 2017.***

***b) THAT an interim order of injunction be and is hereby issued restraining the 1<sup>st</sup> to 4<sup>th</sup> defendants, whether by themselves, their employees, officers agents or any person acting under their authority or in any other manner whatsoever from the publication, circulation and use of the false and unauthorised AGM booklet which contains the annual reports and financial statements of Kiru Tea Factory Company Limited for the year ended 30<sup>th</sup> June, 2017***

***c) THAT an interim order of injunction be and is hereby issued restraining the 1<sup>st</sup> to 4<sup>th</sup> defendants, whether by themselves, their employees, officers agents or any person acting under their authority or in any other manner from the publication, circulation and use of the plaintiffs' names and photographs on the false and unauthorised AGM booklet which contains the annual reports and financial statements of Kiru Tea Factory Company Limited for the year ended 30<sup>th</sup> June, 2017***

b) The questions which were left for this court to determine are:

First, whether or not the aforesaid orders were served and or brought to the attention of the defendants.

Secondly, whether or not the defendants breached the aforesaid orders.

c) On the first question, the plaintiffs have tendered affidavit evidence showing that the defendants were served and made aware of the existence of the court orders. It is the submission of Mr. Ohaga that the defendants were personally served and informed by email. According to Mr. Ohaga, he sent by email to each defendant a letter informing them of the existence of this court's order issued on 16.11.2017. The plaintiff filed the affidavit of Joseph Mureithi, the Regional Accountant of KTDA M.S who averred that the 4<sup>th</sup> defendant informed him on 16.11.2017 that he had received a letter from John Ohaga informing him of the existence of the orders issued by this court. This averment was not retracted by the 4<sup>th</sup> defendant. I am satisfied on my part that the 4<sup>th</sup> defendant was made aware of the existence of this court's orders.

d) The same deponent also averred in his affidavit that he had a telephone conversation with Christopher Mwangi Kioi, the 3<sup>rd</sup> defendant at 7.00pm on 16.11.2017 and in their conversation the duo discussed the contents of the letter sent by email by John Ohaga. Mr. Joseph Mureithi also stated that he had a telephone conversation with the 3<sup>rd</sup> defendant at 7.45am on 17.11.2017 whereof he reminded him of the existence of the court orders. The affidavit evidence of Joseph Mureithi, corroborated the averments of John Ohaga which is to the effect that he informed the 3<sup>rd</sup> defendant by email of the existence of this court's orders. I am satisfied that the 3<sup>rd</sup> defendant was made aware of the existence of the orders issued on 16.11.2017. The question as to whether or not the 1<sup>st</sup> and 2<sup>nd</sup> defendants were made aware of the existence of the court orders was answered by the affidavit of Josiah Ndegwa which affidavit is also filed in support of the motion dated 22.11.2017. He deposes that on 17.11.2017 at 9.00am he handed over to the duo a print out of John Ohaga's letter dated 16.11.2017 which set out in detail the orders issued by this court on 16.11.2017. This piece of affidavit evidence corroborated the assertion by John Ohaga that he informed the 1<sup>st</sup> and 2<sup>nd</sup> defendants by email the existence of the court order. I am satisfied that the 1<sup>st</sup> and 2<sup>nd</sup> defendants were informed of the existence of this court's orders.

e) The second question is whether or not the defendants breached the court orders. It is not in dispute that the court orders were clear and unambiguous. The defendants were restrained from publication, circulation and use of false and unauthorised A.G.M booklet which contains the Annual Reports and Financial Statements of Kiru Tea Factory Company Ltd for the year ended 30.6.2017. The defendants were also restrained from publication, circulation and use of the plaintiffs' names and photographs on the false unauthorised AGM booklet which contains the Annual Reports and Financial Statements of Kiru Tea Factory Co. Ltd for the year ended 30.6.2017. Cynthia Sagini, the legal officer with KTDA M-S swore an affidavit in support of the motion dated 22.11.2017 in which she deposed that she became aware of this court's orders in the course of her duty through the email sent by John Ohaga dated 16.11.2017. She further deposed that on 17.11.2017 that the 1<sup>st</sup> to 4<sup>th</sup> defendants proceeded to publish, circulate and use of false and unauthorised A.G.M. booklet at the AGM conducted on 17.11.2017 despite having knowledge of the aforesaid orders. Joseph Mureithi also made similar averments as those made by Cynthia Sagini. In an attempt to shield themselves, the defendants have stated that the booklets complained of had been printed earlier pursuant to the board resolutions passed by Kiru Tea Factory Co. Ltd. It is also argued that the booklet had been circulated in advance therefore the defendants could not undo what had been done. It could be true that by 17.11.2017, the booklet in contention had already been

printed and published. The averments of Stephen Maina Githiga that the defendants in company of two other directors of Kiru Tea Factory Co. Ltd, circulated and used unauthorised and false AGM booklets which contain the plaintiffs photographs, names, annual reports and financial statements for the year ended 30.6.2017 have not been controverted. The aforesaid acts went against what the orders injuncted. I am satisfied that the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants wilfully breached the court orders made by this court on 16.1.2017 and issued on 17.11.2017. Consequently the quartet are hereby summoned to appear before this court to show cause why they should not be cited for contempt and to submit facts in mitigation to enable this court mete out the appropriate sentence in terms of prayers 2, 3 and 4 of the motion. This court also allows prayer 6 of the motion.

Dated, Signed and Delivered in open court this 13<sup>th</sup> day of December, 2017.

**J. K. SERGON**

**JUDGE**

In the presence of:

..... for the Plaintiff

..... for the Defendant