



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW DIVISION

JR CASE NO. 94 OF 2014

REPUBLIC.....APPLICANT

VERSUS

REGISTRAR OF COMPANIES RESPONDENT

AND

COLLETTA MAWEU.....1ST INTERESTED PARTY

FREDRICK KAHIA THUGI.....2ND INTERESTED PARTY

EX-PARTE

HANNA MWIHAKI MUTURI

ZACHARIA KAHARI MUTHAMBURE

GEORGE KAMAU MACHARIA

HON. FRANCIS JOHN WANYAGE MWANGI

DAVID MAINA GACHANJA

MARY WANJIKU GICHANGA

LYDIA WANGARI MWANGI

LARI NYAKINYUA (SOLAI FARM) LIMITED

RULING

1. The application for consideration in this ruling is the notice of motion dated 28th May, 2015 in which the Applicant, Lari Nyakinyua (Kenya) Limited seeks to be enjoined in these proceedings as an interested party. Before delving into this application, some history is necessary. On 11th March, 2014 Hannah Mwhaki Muturi, Zacharia Kahari Muthambure, George Kamau Macharia, Hon. Francis John Wanyage

Mwangi, David Maina Gachanja, Mary Wanjiku Gichanga, Lydia Wangari Mwangi and Lari Nyakinyua (Solai Farm)Limited being the 1st to 8th ex-parte applicants respectively, approached this Court and sought leave to commence judicial review proceedings. The Registrar of Companies was named the Respondent and Colleta Maweu an Assistant Registrar of Companies was named an Interested Party. I directed that the application be served for inter-partes hearing on 13th March, 2014.

2. On the hearing date, Ms Mambiri appeared for the applicants. Mr. Ndirangu appeared for the Respondent and the 1st Interested Party (Colleta Maweu). Mr. Achoki appeared for the 2nd Interested Party, Fredrick Kahia Thugi and Mr. Omondi appeared for the estates of Samwel Njuguna and Kuria Kinyanjui. After hearing the application for leave, I directed the advocates to reach a consent on the matter.

3. Subsequently a consent was recorded on the same day as follows:

“1.That the 8th Applicant’s Annual General Meeting scheduled for 14th March, 2014 is hereby stood over to 16th May, 2014;

2. That the 8th Applicant’s Annual General Meeting shall be held at the traditional venue of the company at Kimende;

3. The Registrar of Companies to convene and conduct the Annual General Meeting of the 8th Applicant Company;

4. That the cost of conducting the meeting to be met by the 8th Applicant;

5. That there will be no orders as to costs.”

4. On 15th May, 2014 the ex-parte applicants approached the Court with an application dated 13th May, 2014 whose effect was to scuttle the consent of 13th March, 2014. I refused to grant ex-parte orders and directed that the application be served for inter-partes hearing at a later date. That application was later withdrawn. Subsequently the ex-parte applicants filed an application dated 24th June, 2014. The 2nd Interested Party also filed an application dated 17th July, 2014. Those two applications are yet to be heard.

5. Turing back to the application at hand, I note that on 27th April, 2015, Mr. Njuguna for the ex-parte applicants had indicated that he had no objection to the enjoinment of Lari Nyakinyua (Kenya) Limited to these proceedings as an interested party. The only person opposed to the application is therefore the 2nd Interested Party, Fredrick Kahia Thugi.

6. For the record, it is noted that the proposed Interested Party Lari Nyakinyua (Kenya) Limited also filed an application dated 2nd October, 2015 seeking an order directing the Respondent to furnish it with particulars of its directorship and shareholding. That application is yet to be heard.

7. The application dated 28th May, 2015 is supported by grounds on its face namely;

“a) THAT, LARI NYAKINYUA (KENYA) LIMITED is a majority shareholder in LARI NYAKINYUA (SOLAI FARM) LIMITED the 8th Applicant herein.

b) THAT, the order and decision of Colleta Maweu, Assistant Registrar of Companies made on 3rd February, 2014 calling for Annual General Meeting of the 8th Applicant has direct consequences on the Proposed interested Party.

c) THAT, the interest of justice and fairness would only be served if the orders sought herein

are granted.”

8. The application is also supported by the affidavit of Francis John Wanyage Mwangi in which he avers that:

“1. THAT, I am a male adult of sound mind residing in Limuru for gain and hence competent to swear this Affidavit.

2. THAT, I am a shareholder of the Proposed Interested Party Company LARI NYAKINYUA (KENYA) LIMITED a majority shareholder in LARI NYAKINYUA (SOLAI FARM) LIMITED as shown by a copy of the Memorandum & Articles of Association annexed and marked N1.

3. THAT, I have been advised by my counsel Mr. Tom Wachakana and in whose advice I verily believe that any decision made on the 8th applicant by the Court will have direct consequences to our company.

4. THAT, we are bound to suffer prejudice, loss and damage if we are not enjoined in this suit.

5. THAT, whatever I have stated herein is true to the best of my belief, knowledge and information.”

9. The 2nd Interested Party opposed the application through an affidavit filed on 19th August, 2015. It is his case that since the consent order recorded before this Court was implemented and elections held, this Court has no jurisdiction to entertain the application herein.

10. It is also the 2nd Interested Party’s case that the deponent of the affidavit in support of the application is a stranger and has never been a director or member of Lari Nyakinyua (Kenya) Ltd and thus cannot file any document on behalf of the company.

11. The 2nd Interested Party also points out that the deponent of the affidavit is the 4th ex-parte Applicant in these proceedings and was thus a party to the consent recorded on 13th March, 2014.

12. The principle governing joinder of parties in judicial review proceedings is that any party who is likely to be affected by the outcome of judicial review proceedings is entitled to join the proceedings.

13. The application at hand discloses that the proposed Interested Party, Lari Nyakinyua (Kenya) Ltd is a majority shareholder in the 8th Applicant, Lari Nyakinyua (Solai Farm) Ltd. I do not seem to see any rebuttal of this statement by the 2nd Interested Party.

14. In the application before me, the 2nd Interested Party has raised pertinent questions. Those questions lead to certain conclusions. The first conclusion is that it is not known in what capacity Francis John Wanyage seeks to have Lari Nyakinyua (Kenya) Ltd admitted to these proceedings. It is alleged that he is neither a director nor a principal officer of the company. There is no resolution of the Board of Directors supporting the application at hand.

15. The second conclusion is that Francis John Wanyage who swore the affidavit in support of the application is the 4th ex-parte Applicant in these proceedings. He was therefore a party to the consent recorded on 13th March, 2014. He cannot run away from that consent by hiding under Lari Nyakinyua (Kenya) Ltd.

16. In the circumstances of this case, I find that although Lari Nyakinyua (Kenya) Ltd may be affected by these proceedings, its application for joinder has not been made by its directors or principal officers.

The application is also an abuse of the court process as the person who swore the affidavit in support of the application is already a party (4th ex-parte Applicant) to these proceedings.

17. The application dated 28th May, 2015 therefore lacks merit and the same is dismissed with no orders as to costs.

18. For good house-keeping, it also follows that the application by Lari Nyakinyua (Kenya) Ltd dated 2nd October, 2015 has no place in these proceedings. The same is rendered worthless by virtue of the dismissal of the application for injunction.

Dated, signed and delivered at Nairobi this 30th day of May, 2016

W. KORIR,

JUDGE OF THE HIGH COURT