



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**

**JUDICIAL REVIEW MISC. APPLICATION NO. 94 OF 2014**

HANNAH MWIHAKI MUTURI.....1<sup>ST</sup> APPLICANT  
 ZACHARIAH KAHARI MUTHAMBURE.....2<sup>ND</sup> APPLICANT  
 GEORGE KAMAU MACHARIA .....3<sup>RD</sup> APPLICANT  
 FRANCIS JOHN WANYAGE MWANGI .....4<sup>TH</sup> APPLICANT  
 DAVID MAINA GACHANJA .....5<sup>TH</sup> APPLICANT  
 MARY WANJIKU GICHANGA .....6<sup>TH</sup> APPLICANT  
 LYDIA WANGARI MWANGI.....7<sup>TH</sup> APPLICANT  
 LARI NYAKINYUA (SOLAI FARM) LIMITED .....8<sup>TH</sup> APPLICANT

VERSUS

THE REGISTRAR OF COMPANIES.....RESPONDENT  
 COLLETA MAWEU (ASSISTANTREGISTRAR OF COMPANIES)....INTERESTED PARTY

**RULING ON DIRECTIONS**

This court notes that on 11<sup>th</sup> March 2014 the Exparte applicants appeared before Honourable Korir J with a chamber summons dated 11<sup>th</sup> March 2014 seeking for leave of court to file judicial Review proceedings seeking for orders of certiorari and prohibition against the respondent Registrar of Companies and more specifically, to quash the decision of the respondent made on 3<sup>rd</sup> February 2014 calling for annual general meeting of the 8<sup>th</sup> applicant company Lari Nyakinya ( Solai Farm) Limited, and to prohibit the said respondent from continuing, hearing and conducting, annual general meeting of the 8<sup>th</sup> applicant pursuant to the notice issued by the 8<sup>th</sup> applicant.

Honourable Korir J did certify the matter as urgent and he also directed the applicants to serve the application upon the respondent, interested party and the shareholders of the 8<sup>th</sup> applicant for interpartes hearing on 13<sup>th</sup> March 2014. On 13<sup>th</sup> March 2014, the parties advocates present before the court recorded a consent order which was adopted by the court in the following terms:

“The application dated 11th March 2014 is compromised in the following terms;-

1. The 8th applicant’s Annual General meeting scheduled for 14th March, 2014.
2. That the 8<sup>th</sup> applicant’s Annual General meeting shall be held at the traditional venue of that company at Kimende;
3. The Registrar of Companies to convene and conduct the Annual General meeting of the 8<sup>th</sup> applicant company;
4. That the cost of conducting the meeting to be met by the 8<sup>th</sup> applicant.
5. That there will be no order as to costs.”

The consent was accordingly signed by all the parties’ advocates. later on 4<sup>th</sup> May 2014, the applicants filed an application dated 13<sup>th</sup> May 2014 under certificate of urgency seeking among others, to stop the Annual General Meeting scheduled for on 16<sup>th</sup> May 2014, supply of certified copies of the Articles and Memorandum of Association of the 8<sup>th</sup> applicant company and an official search of the status of the company detailing the original and current members and their details ; a filed prospectus of the 8<sup>th</sup> applicant company and an official search of the status of company detailing the original and current members and their details; a filed prospective of the 8<sup>th</sup> applicant to confirm whether it converted from a private to a public company.

The learned Judge Korir declined to stop the scheduled Annual General Meeting and directed the applicant to serve the respondent and interested parties. in the intervening period, the 1<sup>st</sup> applicant secretary of the 8<sup>th</sup> applicant company passed on. That application dated 13<sup>th</sup> May 2014 was later abandoned by a withdrawal letter dated 28<sup>th</sup> May 2014.

Regrettably, following the demise of the 1<sup>st</sup> applicant, a dispute arose relating to her burial and an application to stop the burial 16<sup>th</sup> June 2014, which application was withdrawn on 16<sup>th</sup> June 2014 with no orders as to costs.

On 25<sup>th</sup> June 2014, Mr Njuguna appeared before Honourable Odunga J with an application under certificate of urgency dated 24<sup>th</sup> June 2014 seeking for an injunction restraining the persons purportedly elected as directors of the 8<sup>th</sup> applicant on 16<sup>th</sup> May 2014 from taking over office, running and or management of the affairs of the 8<sup>th</sup> applicant company until the application is heard and determined; nullification of the elections held on 16<sup>th</sup> May 2014; the interim Board of Directors elected on 5<sup>th</sup> December 2013 be allowed to continue in office pending proper elections, review of the orders of 13<sup>th</sup> March 2014 which appeared to give the Registrar of Companies a *carte blanche* to determine who the eligible members are to participate in the Annual General Meeting of the 8<sup>th</sup> applicant regardless of their membership status; and that the court do give proper directions regarding the conduct of the Annual General Meeting of the 8<sup>th</sup> applicant having regard to membership thereof, which remains a private company limited by shares as opposed to a public company. The said application claims that the respondent had pursuant to the orders on 13<sup>th</sup> March 2014 allowed strangers-non members of the 8<sup>th</sup> applicant company to participate in its Annual General Meeting and election of Directors in that the list of 774 members who participated in the Annual General Meeting are not members of the 8<sup>th</sup> applicant hence not eligible to elect officials of the 8<sup>th</sup> applicant; and that those elections were therefore illegitimate and that they would legitimize the illegal alienation, wasting and squandering of the assets of the 8<sup>th</sup> applicant.

on 22<sup>nd</sup> July 2014 the 3<sup>rd</sup> respondent again filed another application dated 17<sup>th</sup> July 2014 seeking to

restrain the applicants from purporting to act as officials of Lari Nyakinya (Solai Farm) Ltd; that the applicants be ordered to hand over documents in their possession to newly elected officials. That application was by consent ordered to be heard together with the application dated 24th June 2014. Parties were allowed to file further affidavits and supplementary affidavits and written submissions were filed and exchanged between/among parties.

Before the above two applications could be heard and determined, a proposed interested party moved in with an application dated 27th February 2015 seeking to be enjoined in the proceedings. The proposed interested party was Lari Nyakinya Limited, claiming that it was a majority shareholder in Lari Solai Farm. That application dated 27th February 2015 was on 28th May 2015 withdrawn and a fresh application filed on the same day. on 19th August 2015, Honourable Korir J directed that the application dated 24th June 2014, 17th July 2014 and 28th May 2015 be heard on 19th November 2015. Nothing transpired on 19th November 2015.

Again, on 18th May 2016 the applicants filed an application under certificate of urgency dated the same day seeking to compel the respondents to surrender title deed numbers IR 10920/1,5157/1 and 1095/1 in the name of the 2nd applicant in their possession to the 2nd applicant or its directors or that in the alternative the said title documents be presumed lost and the Registrar of Lands be ordered to issue fresh title documents to the 2nd applicant. That application has not been heard.

In the meantime, the application dated 29th May 2015 was heard on 11th April 2016 and a ruling delivered on 30th May 2016 dismissing it and effectively rendering the application dated 2nd October 2015 by the same applicant which sought orders directing the Registrar of Companies to furnish it with particulars of its directorship and shareholding worthless.

Honourable Korir J was then transferred to Busia High Court and Honourable Odunga did on 20th June 2016 direct that this matter be placed before me for directions on 6th July 2016 but as was conceded in court by Mr Achoki, the file was not traced for action on 6th July 2016 until later when it was found that proceedings were being typed hence the fixing for directions on 15th August 2016.

On 15th August 2016, the file was only availed to me in the morning a few minutes to 9.00a.m. I had not perused the file to appreciate the proceedings. I have now endeavoured to peruse and appreciate the proceedings hence this summary and the directions that I am about to give herein below.

In my view, the applications which are now pending for hearing and determination are the ones dated 24th June 2014, 17th July 2014 and the latest application which is dated 18th May 2016. For orderliness of proceedings, and since all the three applications were filed under certificate of urgency, I direct that all the three applications be heard together by way of oral submissions in addition to the written submissions that are already filed. Any party who wishes to file a response to the application dated 18th May 2016 to do so within 7 days from the date hereof.

In view of the long delay in determining this matter, occasioned by the numerous applications from time to time, this matter shall be heard on priority basis on a date to be fixed by the court with consent of all the parties' advocates on record and there shall be no more adjournments accorded to the any of the parties who are hereby discouraged from filing application after application which do not seek to end the dispute.

Dated, signed and delivered in open court at Nairobi this 19th day of September, 2016.

Orders accordingly.

**R.E. ABURILI**

**JUDGE**

**In the presence of:**

Mr Achoki for 1<sup>st</sup> and 2<sup>nd</sup> applicants

Mr Njuguna for Respondents

N/A for Interested Party

CA: Adline