



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND ADMIRALTY DIVISION
CIVIL SUIT NO. 474 OF 2014

PETER KARIUKI MUCHIRI.....PLAINTIFF

VERSUS

**WINGLINK INVESTMENT LIMITED.....1ST
DEFENDANT**

JOHN NDEKEI MBURU.....2ND DEFENDANT

**HARRISON GACHUGU MATHAGU.....3RD
DEFENDANT**

**BENEDICT MUASYA MUTISO.....4TH
DEFENDANT**

**KENEDDY GACHOKI MUGERA.....5TH
DEFENDANT**

**MOFFAT MWANGI MUTHECI.....6TH
DEFENDANT**

**MARTIN MUTURI KARUGU.....7TH
DEFENDANT**

**MICHEAL MWAURA KINUTHIA.....8TH
DEFENDANT**

RULING

1. The plaintiff's application dated 24th October 2014 seeks interlocutory injunctions to restrain the defendants from;

a) Withdrawing and/or transferring funds from the Company's account No. 0072050000089, which is at the RAFIKI DTM BANK, RUIRU BRANCH;

b) Selling, charging, transferring, alienating, developing and/or in any manner whatsoever, dealing with the following parcels of land;

i) **NAIROBI/BLOCK 116/887 and ii) L.R. No.4952/2729;**

c) Trading and/or transacting any business.

2. The plaintiff also requested the court declare null and void, the letter dated 26th September 2014, through which the Company allegedly expelled him.
3. The application is premised upon the contention that the defendants had acted illegally and unprocedurally when they purported to expel the plaintiff from the Company.
4. The plaintiff is of the view that there was imminent danger of the transfer and/or the disposal of the assets of the company. If the assets were transferred or disposed of, the plaintiff says that he was likely to suffer loss and damage.
5. Therefore, it is the plaintiff's case that it was in the wider interests of justice and fairness that the court grants the reliefs sought.
6. It is common ground that the plaintiff together with the 2nd to the 8th defendants used to belong to a "Chama" named **WINGLINK INVESTMENT CLUB**. Thereafter, the members decided to incorporate **WINGLINK INVESTMENT LIMITED**, and on 2nd July 2013, the company was incorporated.
7. Each of the 8 persons who had been members of the "club" became both a Director and a Shareholder in the company. Each of them held 50 shares in the company.
8. Notwithstanding the fact that the plaintiff was a Director and a Shareholder of the company, he was notified, through a letter dated 26th September 2014, that he had been expelled from the club.
9. The decision to expel him was said to have been founded upon Article 15 of the Club's Constitution.
10. In a replying affidavit sworn by **MOFFAT MWANGI MUTHECI**, the 6th Defendant, the respondents confirm that the plaintiff had been expelled. However, the expulsion which Mutheci talked about was from the position of Director of Wing Link Investments Limited, as opposed to an expulsion from the club.
11. The minutes of the meeting at which the plaintiff was expelled, was a meeting attended by **MEMBERS**.
12. The meeting was not one by the Company's Board of Directors.
13. From a perusal of the minutes of meetings exhibited by the plaintiff, it is evident that although the club had transformed into a duly incorporated limited liability company, the meetings were still being conducted as if the participants were members of the club.
14. The said members were still making either monthly or Quarterly **CONTRIBUTIONS**.
15. Although the court is yet to peruse the Memorandum and Articles of Association of the company, I note that companies do not ordinarily have contributions from its members. Ordinarily, shareholders in companies purchase shares in the company.
16. It would therefore appear that the members of the Wing link Investment Club had continued operating alongside the company.
17. If that be the position, it would mean that even if the plaintiff was expelled as a member of the club, he is still a Director and a Shareholder of the Company.

18. I am fully alive to the fact that by holding as I have done above, I have literally made a substantive determination of one of the issues raised in the plaint.

19. However, when the letter of expulsion expressly makes reference to the plaintiff being expelled from the **CLUB**, the court cannot wait to the end of the case before confirming the very thing which the respondents have admitted doing.

20. On the other hand, the court finds that if the Company was stopped from transferring or from withdrawing funds from its account until the suit was heard and determined, that would be detrimental to the well-being of the company.

21. Similarly, the issuance of an injunction to restrain the company from trading or from transacting any business, would be akin to killing the very subject matter in which the plaintiff claims to have a legitimate interest.

22. It is in the best interests of all the parties to ensure that the subject matter of the application was preserved, or better still developed further.

23. In the circumstances, I now order that the company shall not alienate, encumber or dispose of its two parcels of land until the case is heard and determined. The said parcels of land are;

a) NAIROBI/BLOCK 116/887; and

b) L.R. No. 4952/2729.

24. However, if the Board of Directors acts with the concurrence of the plaintiff, the company may take any such steps as are calculated to be in the best interests of growing its assets.

25. Finally, in lieu of an injunction to restrain the respondents from withdrawing funds or from transferring funds from the company's Bank Accounts , I order that the Company's Directors may execute Personal Guarantees, addressed to the plaintiff, to secure the plaintiff's share of the company's assets, in the event that the said Directors should later take actions which were detrimental to the interests of the plaintiff.

26. I dare say that I find this case to be most suited to Mediation, which I now recommend to all the parties.

27. The costs of the application dated 24th October 2014 shall abide the final determination of the suit. If the plaintiff succeeds, he will also get the costs of the application. And if the defendants succeed, then they will also get the costs of the application.

DATED, SIGNED and DELIVERED at NAIROBI this 14th day of October 2016.

FRED A. OCHIENG

JUDGE

Ruling read in open court in the presence of

Miss Fundi for Muli for the Plaintiff

Wamae for Munyororo for the 1st Defendant

Wamae for Munyororo for the 2nd Defendant

Wamae for Munyororo for the 3rd Defendant

Wamae for Munyororo for the 4th Defendant

No appearance for the 5th Defendant

Wamae for Munyororo for the 6th Defendant

Wamae for Munyororo for the 7th Defendant

Wamae for Munyororo for the 8th Defendant

Collins Odhiambo – Court clerk.