



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL & ADMIRALTY DIVISION
CIVIL SUIT. NO.624 OF 2015

SAMUEL GUTU MACHARIA.....1ST PLAINTIFF
LUCY WAITHERA MWANGI.....2ND PLAINTIFF
JULIUS KARIUKI MWANGI.....3RD PLAINTIFF
STEPHEN MAINA WANUTHI.....4TH PLAINTIFF
KIRIMA SERVICE LIMITED.....5TH PLAINTIFF

VERSUS

PATRICK G. MWANGI.....1ST DEFENDANT
MOSES MATHEWS.....2ND DEFENDANT
JAMES KARAGU WANUTHI.....3RD DEFENDANT
KAGOE MWANGI.....4TH DEFENDANT
OBADIAH K. MACHARIA.....5TH DEFENDANT
JOSEPH M. MACHARIA.....6TH DEFENDANT
GODFREY MWANGI KABAGE.....7TH DEFENDANT

RULING

1. There is something unusual about the request contained in the Notice of Motion dated 29th February 2016. That Motion seeks the following substantive order:-
 2. THAT an order be and is hereby issued compelling the defendants to call and convene a general meeting within sixty days to elect new directors of the company under the supervision of the Deputy Registrar of this honourable court or the Registrar of Companies.
 3. THAT the Defendant be condemned to pay the costs of this application.

2. It is unusual because the interlocutory relief sought, if granted, would effectively determine this matter substantively in a manner not contemplated by the Plaintiff itself.

3. Let us keep our eyes on the Amended Plaintiff of 29th February 2016. In that pleading the Plaintiffs describe themselves as Directors of Kirima Bus Service Limited (the 6th Plaintiff). The complaint by the Plaintiffs stems from a meeting said to have been held on 15th December 2015. Whilst it is not expressly stated in the Amended Plaintiff that it was in that meeting that the Defendants were 'elected' as Directors of the 6th Plaintiff. Paragraph 17 states:-

“The Plaintiffs aver that the action by the defendants to install themselves as directors is both malicious and unlawful”

4. The prayers sought in the Amended Plaintiff are as follows:-

i. An Order compelling the Defendant to hand over (SIC) over the Company and other assets to the Plaintiff.

ii. An Order compelling the Defendants to convene a General Meeting within a period of sixty days or such other period as this Court may order.

iii. Any other relief that this Honourable Court deems fit.

iv. Costs of this suit.

v. Interest

It seems strange that while in the body of the pleading the Plaintiffs aver that the Defendants were unlawfully “installed” as Directors, there is no prayer for that “election” or “installation” to be countermanded.

5. It seems odd that while the Plaintiffs seem to question the legality of the election of the Defendants as Directors they at the same time bespeak,

“An Order compelling the Defendants to convene a General Meeting within a period of sixty days or such other period as this court may order”.

Is this not a tacit acknowledgement of the status of the Defendants or why should persons who are not Directors of a Company be compelled by a Court Order to convene a General meeting of a company.

6. That acknowledgement is also present in the Notice of Motion of 29th February 2016 where the Court is being asked to compel the Defendants **to call and convene** a General Meeting to elect new Directors under the supervision of the Deputy Registrar of this Honourable Court or the Registrar of Companies.

7. And if this court were to grant the prayers as sought its effect would be to determine this matter substantively but not quite in the manner contemplated by the Amended Plaintiff.

8. If this Court has not been asked to Declare that the Defendants hold the officers illegally or have in contravention of The Memorandum or Articles of Association or the law refused to call a meeting of the Company, then why should the Court be asked to compel a meeting. This Court is reluctant to interfere with the Internal Management of the 6th Plaintiff in that manner.

9. The Notice of Motion of 29th February 2016 is without merit and is declined.

10. There is a second Application dated 4th May, 2016 in which 22 persons seek to be enjoined into this suit as Interested Parties and also for orders that:-

3. THAT this Honourable Court be pleased to annul and /or cancel election of the Defendants herein as Directors of Kirima Bus Service ltd and call for fresh election of new Directors to be held under supervision of this Honorable Court or the office of the Registrar of Companies.

4. THAT the costs of this Application be provided for.

11. The Plaintiffs do not oppose the Application. The Interested Parties are said to be Shareholders of the 5th Plaintiff Company. The Defendants are not unequivocal as to whether they accept that the Interested Parties are shareholders of the Company. Paragraph 4 of the Affidavit of Patrick Githinji Mwangi is rather pale and unspecific in this regard. It is not specific as to who, if any, of the Interested Parties is not a shareholder. In the circumstances this Court accepts that the Interested Parties are shareholders of Kirima Bus Services.

12. Whilst their presence in these proceedings may not add to the effective and complete adjudication of the matters involved in the suit, they would be interested in the outcome. Orders made here may affect them in one way or other. It is for this reason only (and also because their presence may not prejudice the Plaintiffs or Defendants case) that I allow the enjoinder.

13. However, for reasons that made this Court to refuse the prayers in the Notice of Motion dated 29th February 2016, prayer 3 of the Application of 4th May 2016 is declined.

14. These are the Orders of the Court.

i. The Notice of Motion dated 29th February 2016 is hereby dismissed with costs.

ii. Prayer 2 of The Notice of Motion dated 4th May 2016 is allowed. Costs in the cause.

iii. Prayer 3 of the Notice of Motion dated 4th May 2016 is dismissed.

Dated, Signed and Delivered in Court at Nairobi this 17th Day of November, 2016.

F. TUIYOTT

JUDGE

PRESENT;

Karuga for Plaintiff

Wachira for Defendants

Omondi for Interested Parties

Alex - Court clerk