



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MILIMANI**  
**CIVIL SUIT NO 529OF 2011**

**JOHN PETER KAMAU RUHANGA.....1<sup>ST</sup> PLAINTIFF**  
**JOSEPH K. GAKURE.....2<sup>ND</sup> PLAINTIFF**  
**M.J METHU.....3<sup>RD</sup> PLAINTIFF**  
**JOSEPH K. MUTHAMBURE.....4<sup>TH</sup> PLAINTIFF**  
**JOSEPH W. KIRIGWI.....5<sup>TH</sup> PLAINTIFF**  
**LAZARUS W. WAIRAGU.....6<sup>TH</sup> PLAINTIFF**  
**TERESIA WAIRIMU KIRIMA.....7<sup>TH</sup> PLAINTIFF**

**VERSUS**

**KENDA INVESTMENTS LIMITED.....1<sup>ST</sup> DEFENDANT**  
**WANJAU KIRIMA.....2<sup>ND</sup> DEFENDANT**  
**GODFREY KIBUTHU.....3<sup>RD</sup> DEFENDANT**

**RULING**

**INTRODUCTION**

1. The Defendants’ Notice of Motion application dated 8<sup>th</sup> August 2013 and filed on 12<sup>th</sup> August 2013 was brought under the provisions of Order 40 Rules 1 and 2, Order 51 Rule 1 of the Civil Procedure Rules, 2010, Sections 1A, 1B and 3A of the Civil Procedure Act, the inherent power of the court and all enabling provisions of the law. Prayer No (1), (2) and (3) were spent. It sought the following remaining orders:-
  1. Spent.
  2. Spent.
  3. Spent.
  4. **THAT the Plaintiffs/Respondents do render a true and proper account of the moneys collected by them as rent from Kenda House, Murang’a and Kenda House, Nairobi from 3<sup>rd</sup> August, 2013 until the date of hand-over of both properties and to pay up such amount as shall be found to be due from them to the Defendants/Applicants.**

5. THAT the *ad hoc* meeting held by the Plaintiffs/Respondents on 27<sup>th</sup> July, 2013 at Kenda House, Kanyenyaini, Murang'a and later filed with the Registrar of Companies on 31<sup>st</sup> July 2013 as "Extra Ordinary General Meeting", and the resolutions passed therein be declared as illegal, null and void and *ultra vires* the Memorandum & Articles of Association of Kenda Investments Limited.
6. THAT the Plaintiffs be condemned to pay to the 1<sup>st</sup> Defendant the costs for the preparation of the Annual General Meetings of Kenda Investments Limited which were to be held on 26<sup>th</sup> November 2011, 26<sup>th</sup> May 2012 and the adjourned meeting of 27<sup>th</sup> July 2013 at approximately Kshs 500,000/= each altogether totalling Kshs 1,500,000/=.
7. THAT this court be pleased to order that the Defendants do call for another General Meeting in accordance with the provisions of Article 59 of the Memorandum & Articles of Association of the 1<sup>st</sup> Application to complete the deliberations set out in the Agenda of the adjourned meeting that was held on 27<sup>th</sup> July 2013.
8. THAT the Respondents be condemned to meet the cost of holding such General Meeting, as the case may be.
9. THAT the Plaintiffs by themselves or through their agents, servants or assigns be restrained from disrupting any further meetings convened by the Defendant.
10. THAT the Respondents and each one of them be held liable for any financial, structural or any other loss and damage suffered by the 1<sup>st</sup> Applicant both at Kenda House, Kanyenyaini, Murang'a and Kenda House, Nairobi as a result of their actions herein.
11. THAT the Plaintiff be condemned to pay the costs of this Application.

2. A brief background of this case is that in a ruling delivered by the Hon Justice Mutava on 19<sup>th</sup> April 2012, it was ordered that the Annual General Meeting be held within sixty (60) days of his said ruling. The said learned Judge also directed that the members be notified of the said Annual General Meeting through the local press and radio in addition to personal service.
3. The Court also directed that the Registrar of Companies or a representative thereof do supervise the Annual General Meeting to ensure that the meeting and its agenda complied with the law and the Constitution of the 1<sup>st</sup> Defendant.
4. Subsequently, on 28<sup>th</sup> June 2013, this court dismissed the Plaintiffs' Notice of Motion application dated and filed on 18<sup>th</sup> May 2012 that had sought to have amongst other prayers, certain agenda included for discussion in the Annual General Meeting that was expected to be held.

### **THE DEFENDANTS' CASE**

5. The Defendants' application was supported by the Affidavit of Wanjau Kirima that was sworn on 8<sup>th</sup> August 2013. He also swore a Supplementary Affidavit on 24<sup>th</sup> September 2013. The same was filed on 25<sup>th</sup> September 2013. The Defendants' written submissions were dated and filed on 4<sup>th</sup> October 2013.
6. The Plaintiffs and the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants, amongst others, were members of the 1<sup>st</sup> Defendant company (hereinafter referred to as "the Company"). The said Defendants together with one Gerishon Kamau Kirima (herein after referred to as "the deceased"), were and had at all material times been the lawful and *bona fide* directors of the said company having been so elected by the members.
7. They contended that after the first two (2) items in the Agenda of the day had been disposed of during the Annual General Meeting that was held on 27<sup>th</sup> July 2013, the Plaintiffs, rowdy youth and other strangers stormed into the meeting hall, chased away the security detail and disrupted the otherwise quiet and peaceful meeting that was going. As a result thereof, the said meeting was adjourned.
8. However, in their absence, they said that the Plaintiffs proceeded to carry out certain deliberations and held elections of directors in which they purportedly ousted the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants from being directors of the Company and on 3<sup>rd</sup> August 2013 and 5<sup>th</sup> August 2013, they took over control and management of Kenda House, Murang'a and Kenda House, Nairobi respectively.

9. Thereafter, the Plaintiffs filed returns with the Registrar of Companies which were outrightly rejected for registration by the Registrar. Following a stand-off in the running and management, they filed the present application

### **THE 1<sup>ST</sup>- 6<sup>TH</sup> PLAINTIFFS' CASE**

10. John Peter Kamau Ruhangi swore a Replying Affidavit on 28<sup>th</sup> August 2013 on behalf of the 1<sup>st</sup> - 6<sup>th</sup> Plaintiffs herein. The same was filed on 29<sup>th</sup> August 2013. He also swore a Supplementary Affidavit on 25<sup>th</sup> September 2013. The same was filed on 25<sup>th</sup> October 2013. The 1<sup>st</sup>- 6<sup>th</sup> Plaintiff's written submissions were dated 6<sup>th</sup> November 2013 and filed on 8<sup>th</sup> November 2013.
11. The 1<sup>st</sup> - 6<sup>th</sup> Defendants contended that the Defendants issued the Notice for the Annual General Meeting and that a Father Joakim Gitonga was unanimously elected to chair the proceedings of the Annual General Meeting on 27<sup>th</sup> August July 2013 as the Registrar of Companies was unable to attend the said meeting. They said that the 2<sup>nd</sup> Defendant stormed out of the meeting but they continued with the said meeting. They were categorical that the Registrar of Companies ought not to have consulted the 2<sup>nd</sup> Defendant when the Notification of Change of Directors and Resolution was filed with the said office.

### **THE 7<sup>TH</sup> PLAINTIFF'S CASE**

12. She swore a Replying Affidavit on 21<sup>st</sup> August 2013. The same was filed on 22<sup>nd</sup> August 2013. Her Supplementary Affidavit was sworn on 28<sup>th</sup> October 2013 and filed on 29<sup>th</sup> October 2013. She neither intimated to the court of her wish to highlight her submissions nor were there any written submissions in the court record.
13. She confirmed that the Annual General Meeting was held on 27<sup>th</sup> August 2013 following the court ruling of 28<sup>th</sup> June 2013 but that the same was not supervised by the Registrar of Companies as had been ordered by the court. She said he had given his apology due to his inability to attend the said meeting. She pointed out that new directors were duly elected after elections of directors were held.
14. It was her contention that there was no need to re-issue a notice for another meeting as they therefore proceeded with the said Annual General Meeting when the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants walked out of the said meeting. She accused the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants of abusing their powers as directors of the Company and indicated that any monies that had been collected was deposited in the Company's Bank accounts. She therefore urged the court to dismiss, with costs, the Defendants' application as the same was misconceived and based on half truths.

### **LEGAL ANALYSIS**

15. The Defendants submitted that the Companies Act (Chapter 486 of the Laws of Kenya) (hereinafter referred to as "the Act") demanded that limited liability companies carry out their functions in accordance with the law and their respective constitutions which were Memorandum and Articles of Association.
16. They argued that at all material times, they complied with the requirements when they called the three (3) Annual General Meetings that aborted and that the Plaintiffs had always been keen on staging a coup by all means especially after the demise of the deceased.
17. It was their submission that they acted lawfully when they adjourned the Annual General Meeting that was held on 27<sup>th</sup> August 2013 in accordance with Regulation 57 of the Table A and Article 59 of the Memorandum and Articles of Association of the Company as these provisions empowered the Chairman to adjourn any meeting from time to time and from place to place.
18. They submitted that there were reasonable grounds to adjourn the said the meeting of 27<sup>th</sup> July 2013 as strangers, other than *bona fide* members, stormed into the meeting and disrupted it.
19. They stated that once they adjourned the said Annual General Meeting, no other meeting could lawfully be held on the same day at the same venue by anybody else as it was only the 2<sup>nd</sup> and 3<sup>rd</sup>

- Defendants who, in their capacity as directors, could legally call, preside over or adjourn the Annual General Meeting and that the deliberations and elections conducted thereunder were illegal, null and void and *ultra vires* the Constitution of the company.
20. It was their contention that any persons who were purportedly elected by the Respondents were therefore not validly elected and the Registrar of Companies was right in refusing to recognise them.
21. On their part, the Plaintiffs submitted that the Defendants' application was intended to defeat the wish and rights of the members of the Company who duly exercised their right to vote during the Extra Ordinary Annual General Meeting. They were emphatic that the elections of the new directors were free and fair and in accordance with Company's Memorandum and Articles of Association.
22. It was not in dispute that the elections that were held on 27<sup>th</sup> August 2013 were not peaceful. The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants walked out of the meeting and one Fr Joakim Gitonga was elected to chair the remaining part of the meeting. From the accusations and counter-accusations by the parties herein, it was not possible to exactly state which party was being truthful concerning the events of that day on the basis of the affidavit evidence that was filed herein.
23. The court did not find it necessary to set out the details of the same because the dispute between the parties boiled down to whether or not the meeting that was held on 27<sup>th</sup> August 2013 could be said to have been strictly in accordance with the provisions of the Companies Act and the Company's Memorandum and Articles of Association with a view to making a determination in this matter.
24. As was rightly pointed out by the Defendants, Regulation 80 in Table A in the First Schedule of the Act and Article 95 of the Company's Memorandum and Articles of Association provided that the business of the said Company would be managed by the directors. The Defendants averred that the business included issuing of notices for meetings which in this case was done by the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants in their capacity as were directors of the said Company. They said directors also had the power to adjourn meetings to such later dates and at such venues they could determine.
25. The circumstances under which such a meeting can be adjourned have been stated in Regulations 54, 55 and 56 of Table A First Schedule of the Act. The same stipulates as follows:-

**“55. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members shall be dissolved; in any other case it shall stand adjourned to the same day in the next week and place as the directors may determine, and if at the adjourned meeting a quorum of not present within half an hour the time appointed for the meeting, the members present shall constitute a quorum.**

**55. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company, or if there is no such chairman, or if he shall not be present within fifteen minutes after the time appointment for the holding of the meeting or is unwilling to act the directors present shall elect one of their number to be chairman of the meeting.**

**56. If at any meeting no director is willing to act as chairman or if no director is present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose one of their number to be chairman of the meeting.”**

26. In view of the expectation that the members and directors would be guided by a company's Memorandum and Articles of Association, the adjournment of an annual general meeting on the ground that directors would walk out or a meeting would turn unruly were not envisaged under the said Regulations. Indeed, Article 59 of the Company's Articles of Association provided that a meeting could only be adjourned with the consent of the members who were present at a meeting that had been called.
27. Notably it was evident from Paragraph 3 of the Defendants' Supporting Affidavit that the 2<sup>nd</sup> Defendant was a Secretary Director of the Board of Directors. The 3<sup>rd</sup> Defendant did not swear an affidavit and it was not clear from the facts that were presented before the court whether or not he was the Chairman of the Board of Directors.

28. Assuming he was the Chairman and he walked out, the 2<sup>nd</sup> Defendant would have chaired the meeting. Unfortunately, this did not appear to have been tenable as both the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants were on the same side and supposedly walked out at the same time. In the absence of any evidence that either of them had been designated to be chair the said meeting, the said meeting of 27<sup>th</sup> August 2013 did not appear to have been properly constituted.
29. There was also no indication, whatsoever, whether the said Fr Joakim Gitonga was a director of the company or if he was appointed by the other directors or if he was appointed under the provisions of Regulation 56 of Table A First Schedule of the Act or a member of the Company to give him capacity to chair the meeting of 27<sup>th</sup> August 2013. In the same vein, as was correctly pointed out by the Defendants, any deliberations at the meeting would therefore have been of no legal effect as the meeting did not appear to have been properly constituted after the same was adjourned albeit temporarily, after what the Defendants referred to as “chaos.”
30. The court observed that there were a lot of hostilities between the Plaintiffs and the Defendants making it impractical for an Annual General Meeting to be called. Fortunately, the Companies Act does also envisage situations where it would be impracticable to call a meeting of a company. Section 135 of the Companies Act provides as follows:-

**“1. If for any reason it is impracticable to call a meeting of a company in any manner in which meetings of that company may be called, or to conduct the meeting of the company in the manner prescribed by the articles or this Act, the court may either of its own motion or on the application of any director of the company or any member of the company who would be entitled to vote at the meeting, order a meeting of the company to be called, held and conducted in such manner as the court thinks fits, and where any such order is made may give such ancillary or consequential directions as it thinks fit expedient and it is hereby declared that the directions that may be given under this subsection include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.**

**(2) Any meeting called, held and conducted in accordance with an order under subsection (1) shall for all purposes to be a meeting of the company duly called, held and conducted.”**

31. As the court was not satisfied that there was a duly held and constituted Annual General Meeting on 27<sup>th</sup> August 2013, the Defendants were perfectly in order to seek an order of the court to constitute another meeting and the court to order that the same be called, held and constituted under Section 135 (1) of the Companies Act.
32. The court would not, however, deem this meeting to be for purposes of concluding the Agenda of the purported meeting of 27<sup>th</sup> August 2013. It would have to be a fresh meeting as the court was not even sure whether the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants had capacity to chair the meetings as was alluded to hereinabove. What was, however, clear to the court was that the question of the removal and/or replacement of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants even if included in the Agenda would have to be in accordance with the Company’s Articles of Association.
33. In this regard, the Company would have to bear the costs of convening another Annual General Meeting. The court was not well seized of all facts to have made a determination as to which party was responsible for the aborting of the meetings that were said to have been held on 26<sup>th</sup> November 2011 and 26<sup>th</sup> May 2012 and in any event, the same were not issues the court found to be relevant in the determination of the present application.
34. In view of the contentious matters herein, the court found it prudent to extend the *status quo* order that both the Plaintiffs and the Defendants would have to continue consulting each other on the depositing of rent monies until such time an annual general meeting was held.
35. Being a substantive issue, the court was not persuaded to interfere with the running of any of the accounts pending the holding and constitution of the next Annual General Meeting. The court noted that the Plaintiffs were ready, capable and willing to render a true and proper account and that monies were paid into the company’s bank account. In view of the dispute herein, it was necessary that tenants continued depositing monies in the Company’s accounts.
36. Having said so, the Defendants did not place before the court any evidence to demonstrate that the

- Plaintiffs behaved in an unruly manner. There was also on evidence to show that the Plaintiffs in staging what the Defendants termed as a “coup”, caused damage to property of the Company which would necessitate this court to grant the orders they had sought.
37. However, in view of the hostilities between the Plaintiffs and the Defendants, it was necessary to have police be present during the next to be held and constituted meeting with a view to maintaining peace and order. In any event, the presence of the police would not cause any prejudice to the Plaintiffs. The court did, however, expect both the Plaintiffs and the Defendants not to do anything that would disrupt such a meeting. This order would not be applicable to the Plaintiffs only but the same would apply to the Defendants.
38. Accordingly, having considered the pleadings, affidavit evidence, oral and written submissions and the case law that was relied upon by the parties, the court found itself in agreement with the Plaintiffs’ submissions that the Defendants had not demonstrated that they had met the threshold for granting of interlocutory injunctions as was set out in the case of **Giella vs Cassman Brown Co Limited (1973) EA 360** or that if the interlocutory injunction was not granted, the Defendants could be compensated in monetary terms.
39. That notwithstanding, the court found that the Plaintiffs did not have capacity to properly constitute the meeting when the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants purportedly walked out of the meeting. Additionally, the Defendants did not demonstrate any good reason to have adjourned the meeting more so because the dispute appeared to have emanated from what was to be included in the Agenda.

### **DISPOSITION**

40. For the foregoing reasons, the upshot of this court’s ruling was that the Defendants’ Notice of Motion application dated 8<sup>th</sup> August 2013 and filed on 12<sup>th</sup> August 2013 was hereby allowed on the following terms:-
- a. **As there were no valid elections on 27<sup>th</sup> August 2014, the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants, who remained as Directors are hereby directed to call for another Annual General Meeting in accordance with Article 53 of the Company’s Articles of Association and which meeting shall be held and constituted not later than thirty five (35) days from the date of this ruling.**
  - b. **The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants shall cause the Notice for the Annual General Meeting to be advertised in the Daily Nation and in The Standard and in at least two (2) local radio stations in the language of the majority of the members of the Company.**
  - c. **In view of the fact that the court directed that the Annual General Meeting shall be called, held and constituted under the provisions of Section 135 (1) of the Companies Act, the matter will be mentioned on 2<sup>nd</sup> March 2015 when both the Plaintiffs and the Defendants shall give to the court three (3) names each, of members of the Company from which the court shall choose one (1) such person from those lists to be present in person to constitute the meeting.**
  - d. **The Registrar of Companies or a representative is hereby directed to supervise the Company’s Annual General Meeting to ensure that the meeting and the agenda shall accord with the provisions of the Companies Act and the Company’s Articles of Association. The Defendants shall extract this order for service upon the Registrar of Companies.**
  - e. **The Defendants shall serve the Officer Commanding Station in the location of the venue of the meeting with a certified copy of this order to avail officers to maintain law and order during the Company’s Annual General Meeting. The Defendants shall cause the notification of the date of the said Annual General Meeting to the said Officer Commanding Station.**
  - f. **Parties shall each bear their own costs because it was evident to the court that none of them followed the provisions of the Company’s Articles of Association or the Companies Act as far as conducting the business of a meeting that had been adjourned.**
41. In conclusion, the court wishes to draw the attention of the parties to the provisions of Section 219 (f) of Companies Act that gives the court power to wind up the Company if it is of the opinion that

it would be just and equitable that the said Company be wound up. Similarly, under Section 63 (e) of the Civil Procedure Act Cap 21 (Laws of Kenya), the court has power to make such interlocutory orders as may appear to it to be just and convenient. Parties are therefore hereby directed to comply with the directions of the court without fail.

42.It is so ordered.

**DATED** and **DELIVERED** at **NAIROBI** this 26<sup>th</sup> day of February, 2015

**J. KAMAU**

**JUDGE**