REPUBLIC OF KENYA

IN THE HIGH COURT F KENYA AT NAIROBI

MILIMANI COMMERCIAL & ADMIRALTY DIVISION

SUIT NO. 316 OF 2014

1. GEORGE GITHINJI KANYI

2. GEOFFREY KIMANI WANJIE

3. JACKSON NJANGA MAINGI

4. ZIPPORAH WANGOI NGUGI……..….....PLAINTIFFS

VERSUS

1. JOHN NDUNGU KUNGU

2. GEORGE NJAU

3. FRANCIS NJOROGE CHEGE

4. STAHITO COMMUTER SERVICES COMPANY LIMITED

5. DAVID MURIGI KIMANI

6. ISHMAEL MWAI MWANGI

7. PAUL WANJOHI MAINA…….……DEFENDANTS/RESPONDENTS

RULING

Injunction

[1] The Plaintiffs have applied for injunctive relief through a Motion dated Motion dated 18.07.2014. The Motion is supported by the affidavit of the 3rd Plaintiff. The application sought several orders against the Defendants but the significant ones are; a mandatory injunction to order the Defendants, their employees, agents and / or servants to unconditionally allow the Plaintiffs' motor vehicles registration numbers, namely, KAU 419 K, KAU 023 S, KAT 517 Z, KAX 519 R, KAL 445 V, KAV 532 N, KAQ 033 D and KAR 533D and / or any other of the Plaintiffs' motor vehicle(s) registered with the 4th Defendant /company to resume operations under the 4th Defendant at the 4th Defendant's designated stand at City Stadium terminus; and an interlocutory injunction restraining the Defendants from receiving

monies from the Plaintiffs in respect of motor vehicles owned by the Plaintiffs until a general meeting of the company is conducted under the supervision of the Registrar of Companies or other officer appointed by court and accountability measures are put in place on all monies received by the 4th Defendant.

[2] According to the Applicants, since the interim orders were granted directing the Defendants to unconditionally allow the Plaintiffs' aforesaid motor vehicles to operate under the 4th Defendant and at the 4th Defendant's City Stadium terminus and these orders had been extended from time to time, there are only two remaining issues for determination in this application. First, whether the Court should confirm the said orders; and second, whether the court should restrain the Defendants from receiving monies from the Plaintiffs in respect of motor vehicles owned by the Plaintiff until a general meeting of the company is conducted under the supervision of the registrar of companies or other officer appointed by court and accountability measures are put in place on all monies received by the 4th Defendant.

[3] The grounds in support of the application are set out in the application. The Plaintiffs, with leave of court, filed a supplementary affidavit also sworn by the 3rd Plaintiff on 15.10.2014 which offers further ground in support of the application. The Applicants are aware that they have to establish a prima facie case with a probability of success; show that they are likely to suffer irreparable damage / injury that cannot be adequately compensated by an award of damages; and show that the balance of convenience tilts in favour of granting an injunction as per the locus classicus case of **Giella – vs – Cassman Brown & Co. Ltd 1973 E.A. 358**. They argued that they have established prima facie case. First, they are the owners of motor vehicles in question which plies the Muthurwa / Industrial Area route from the City Stadium terminus. In or around 2008, the Plaintiffs together with other motor vehicles owners plying the said route then averaging 30 members formed a self-help group, namely, Stahito Commuter Services Organization (hereinafter referred to as 'the organization'). The sole objective of the organization was to manage the operations of the members' motor vehicles as well as provide an investment vehicle for members from the surplus of the agreed daily contribution of Kshs. 200/- per motor vehicle after all deductions of operational expenses. The said surplus was to be deposited in a bank account opened in the names of selected members but for the benefit of all the members of the organization. A copy of the regulations of the organization as at 15.11.2010 is attached as annexure JNM -2 to the Plaintiffs' supporting affidavit. However, the membership of the organization was restricted to owners of motor vehicles; the objective was to help all members materially in accordance with ones savings; on ceasing of being a member, the contribution of such member would be refunded less all expenses incurred during the contribution period, and the refunds was payable after the expiry of two (2) months from the date of notice to withdraw membership. Further, the Constitution of the Organization provided for compliance by members with 'Michuki rules' and discipline of the crew; financial oversight by having auditors appointed by a majority of 2/3 of all members of the organization; and entry fee for new member was Kshs. 10,000/-.

[4] In or around 2010, the members of the organization nominated the 5th, 6th and 7th Defendants in addition to the 1st, 2nd and 3rd Defendants as the active officials to manage the self-help group and the fleet of motor vehicles under the organization. Towards the close of 2010, the government policy was that only Saccos and limited liability companies would be licensed to operate public service transport motor vehicles (PSVs). The officials of the self-help organization were therefore mandated to convert the organization into a limited liability company as it was the easier option compared to registering a Sacco. This explains why the 4th Defendant's name assumed the name of the organization self-help group entirely and word for word. The Applicants beseeched the Court to take judicial notice of that in the ordinary course of nature / notoriety the Registrar of companies had to receive the organization's certificate and deregister the same prior to registration of a limited liability company bearing the same name as that of the dissolved self-help group. The Applicants accused the Defendants of clandestinely avoiding the issue of the origin of the name Stahito Commuter Services. The registration of the company was merely meant to enable the members meet the criteria for registration as a PSV operator under Regulation No. 5(1) of the National Transport and Safety Authority (operation of Public Service Vehicles) Regulations, 2013 (hereinafter referred to as the NTSA PSV Regulations, 2013). Copy of the regulations is annexure JNK -1' to the Defendants replying affidavit. The membership of the company drew from the self-help group.

[5] As part of compliance with the regulations, the 3rd Plaintiff was selected as the secretary and the 1st, 2nd and 3rd Defendants were selected by the members to oversee the registration of the 4th Defendant as an operator under the rules. He collected and collated documents for each member of the group including documents in respect of ownership of motor vehicles (as shareholders of the 4th Defendant), records for employees (drivers) and conductors, among others. Through the joint efforts of the said group of members, the 4th Defendant was accordingly registered as a PSV operator in 2011. Following successive acts of financial improprieties / lack of accountability on monies collected from members, a business name, Stahito Travellers was registered and a bank account No. 0113 421 875 5400 was opened at the Enterprise Road Branch of Co-operative Bank of Kenya in the names of 1st, 3rd and 5th Defendants and the 3rd Plaintiff. The 5th Defendant was tasked with the responsibility of receiving daily collections from employees of the Company and banking it at the designated bank account. At a meeting dated 28.08.2012 it was resolved that the management committee would convene quarterly meetings wherein they would update the members on financial status of the company and the operations of their motor vehicles. Pursuant thereto, only one meeting was held on 01.12.2013 and thereafter, no more meetings were held, the pressure from the members, notwithstanding. In September, 2013, the 3rd Plaintiff as a signatory to the aforesaid account noted that the net savings from the members' contribution for over an year totaled slightly over Kshs. 1,000,000/- despite an average monthly collection / savings of Kshs. 300,000/- per month (based on an average saving of Kshs. 10,000/- per day from Kshs. 18,000/- collected daily from the average of 90 vehicles). His co-signatories were unwilling to answer queries to account raised by the 3rd Plaintiff. he attached bank statement and extracts from books of accounts marked Annexure JNM – 4 to the Plaintiffs' supporting affidavit.

[6] Due to failure to hold the quarterly meetings and account to members on financial matters, the members become dissatisfied (the Plaintiffs included) and called a meeting of all members and invited the management (but which the management did not attend). It was resolved at the meeting that the companies do hold a special meeting of all members within 7 days. This period was extended to 21 days and with a threat to suspend daily collections, the Defendants succumbed and convened a meeting of 02.11.2013. At the latter meeting, members raised accountability questions since the financial statements presented appeared to be mere fabrications and especially the alleged expenses. Thereafter, the Defendants adopted a culture of victimization towards those perceived as the leaders of the agitated members leading to suspension of operation of their motor vehicles on inane grounds. The Defence filed is mere denials. Despite allegation that the Defendants registered the companies for themselves, they have not produced any management contracts executed between themselves and the Plaintiffs.

[7] The Applicants took a very harsh swipe at the Defendants' character which they described *as dishonest, crooked and fraudsters hits its crescendo when in paragraph 11 of their replying affidavit they annexed forged documents in a failed bid to bolster their false accusation that the 1st Plaintiff presented false documents to the licensing authority.* These falsehoods are exposed in paragraph 6 of the Plaintiffs further affidavit (see page 3 thereof) where the Defendants altered the year component of the date of the receipt from KRA from 2012 to 2014 using a pen (Annexure JNK -2a to the Defendant's Replying affidavit) and swapping speed governors compliance certificates (Annexure JNK – 2d to the Defendants' replying affidavit). Their allegations that they reported the Plaintiffs to the police are false and that explains why they do not have an Occurrence Book (OB) number in respect of the alleged complaint, and further no summons to attend at the police station were made to the Plaintiffs; no criminal charges were preferred against any of the Plaintiffs. On the contrary, it is the Plaintiffs who reported the matter of being restrained from operating their motor vehicles to the police. The photographs (Annexure JNK -7 to the Defendant's replying affidavit) are meant to mislead the court that the Plaintiffs' motor vehicles continued to ferry passengers in spite of being denied access to the 4th Defendant's designated stand at City Stadium terminus.

[8] The Plaintiffs submitted that they will suffer irreparable injury unless the orders sought are granted. Their motor vehicles will be restrained from operating under the name of the 4th Defendant and at the 4th Defendant's designated terminus at City Stadium. This would occasion financial losses to them. Further the Defendants have persisted in collecting the Kshs. 200/- from each motor vehicle but without

issuing any receipts. The Plaintiffs'' advocates letter of 07.08.2014 has been ignored. The Plaintiffs are law abiding and so they came to court. If we have to wait until the suit is concluded without interim orders, everything will be nugatory. According to the Plaintiffs, the following facts tilts the balance of convenience in favour of the granting an injunction. The Plaintiffs can only operate their motor vehicles under a registered operator with more than 30 motor vehicles. Regulation 7 ensures that no PSV vehicle is transferred from one sacco or company without approval by the NTSA authority. Rule 9 thereof obligates the Defendants to report any alleged misdeeds on the part of the Plaintiffs to the Authority and seek the authority to exercise its powers and not to take the unilateral step of putting them off road without reporting to NTSA. The NTSA only register operators to operate motor vehicles on a specific route and from a specific terminus. Other than daily income, the Plaintiffs' investment in the 4th Defendant will be lost upon transfer / registering with another operator. It is an involving process to register with the operators plying the said route as they have their own standards including having 25 seater motor vehicles as opposed to 14 seaters. The Court should grant the orders sought.

The Respondents opposed application

[9] The Respondent opposed the application. To them, the Applicants do not deserve the orders as they have not met the threshold of law. The Plaintiffs, as matatu owners, do not have any management contract with the 4th Defendant as a management company allowing them to operate under the Company's banner. The Plaintiffs do not have any *locus standi* to interfere with the affairs of the 4th Defendant. The genesis of the dispute herein is the 4th Defendant's questioning how the Plaintiffs obtained the TLB licences in the name of the 4th Defendant, yet they had no agreement with the 4th Defendant. In fact, the Defendants suspect fraud on the part of the Plaintiffs. There is a reason for each of the vehicles to be questioned by the 4th Defendant. The summary of the unresolved issues pertaining to each motor vehicle are provided as follows. For instance, the application by GEORGE GITHINJI KANYI (KAU 419K), 1st Plaintiff was rejected by the 4th Defendant because he had presented a false document to the 4th Defendant. The false document is "JNK-2e". GEOFFREY KIMANI WANJIE (KAT 517Z) – and 2nd Plaintiff, obtained a TLB licence under the 4th Defendant's yet the 4th Defendant had not issued any letter authorizing his vehicle to operate under the company. He has not explained how and why he obtained a TLB licence under the company without the company's authorization. JACKSON NJANGA MAINGI (owner of KAX 519R) – 3rd Defendant – has been interfering with the operations of the 4th Defendant. ZIPPORAH WANGOI (owner of KAV 532N, KAQ 033D and KAR 533D) the 4th Plaintiff, obtained a TLB licence under the 4th Defendant's yet the 4th Defendant had not issued any letter authorizing his vehicle to operate under the company. He has not explained how and why she obtained a TLB licence under the company without the company's authorization. The owner of Matatu registration number KAL 455V is unknown and has never interacted with the 4th Defendant. Matatu registration number KAU 023S, has had a series of incidences: the driver was at one point drunk, a commuter reported that he had stolen her phone, and the manager of the said vehicle, one Mwangi showed up with handcuffs and illegally handcuffed the 1st Defendant, for which he was charged and subsequently convicted in a Criminal Case in Makadara Law Courts. A copy of an apology letter from the said driver was annexed and marked **"JNK-6".**

[10] The Defendants stated that the plaintiffs' vehicles have never been out of work as alleged. They annexed photographs to that effect. The plaintiffs are, therefore, misusing the court process. The 4th Defendant, however, demands that the Plaintiffs' vehicles should stop plying under its banner in the absence of an agreement between them. And, if they do not want to comply with the 4th Defendant's demand, they should join other PSV Management SACCOS/Companies since the 4th Defendant does not have a monopoly over the Muthurwa Industrial Area Route, and has no powers to stop the Plaintiffs' vehicles from plying any route in Kenya. It is a blatant lie that the motor vehicles cannot be easily managed by other PSV SACCOs or Companies. The Plaintiffs have also formed a SACCO known as NEW STAHITO SACCO LIMITED, and some of the Plaintiff's matatu are plying under the banner of the said company exhibit "JNK-9" is a photograph which is self-evident. Therefore, the Plaintiffs have not come to court with clean hands. There are valid question being asked by the 4th Defendant.

[11] Prayer 4 seeks to prevent the *bona fide* shareholders and directors of STAHITO COMMUTER SERVICES COMPANY LIMITED (the 4th Defendant) from receiving money for services offered, yet Plaintiffs are NOT members of the 4th Defendant, so they have no *locus standi* to demand of the Court to interfere with the operations of the 4th Defendant. The Plaintiffs are attempting to interfere and cripple the operations of the 4th Defendant. In any case, Plaintiffs have not shown that they are members of the said Company. The Company offers services to Public Service Vehicles at a fee, and request to restrain the Directors from collecting fee as agreed by members is tantamount to closing down the company. The accounts annexed to the Plaintiff's Application are not from the 4th Defendant's books. Neither are the Defendants aware of special general meetings of the 4th Defendant as alleged. Neither do Plaintiffs have any *locus standi* to call for a meeting of the 4th Defendant or be involved in the management of its affairs. The said prayer cannot therefore be sanctioned by law. In **Defence Advisory Group (Kenya) & another v Defence Advisory Group (Denmark) & another [2013] eKLR**, Havelock J dismissed a similar application since the Plaintiff was neither a shareholder nor a director of the Defendant. The application does not satisfy the threshold for granting temporary injunctions postulated in the case of **Giella vs Cassman Brown** and should be dismissed with costs. The balance of convenience does not tilt in favour of granting the orders.

THE DETERMINATION

[12] This case presents difficult scenario. It is one case which touches on the very core of road safety regulations which are aimed at bringing sanity in our roads. On one hand are the plaintiffs who insist are among the founder members of the 4th Defendant. They submitted that, in 2008, the Plaintiffs and other members about 30 in number founded a self-help group known as Stahito Commuter Services Organization. The sole objective of the organization was to manage the operations of the members' motor vehicles as well as provide an investment vehicle for members from the surplus of the agreed daily contribution of Kshs. 200/- per motor vehicle after all deductions of operational expenses. The said surplus was to be deposited in a bank account opened in the names of selected members but for the benefit of all the members of the organization. The self-help group had its own regulations and Constitution. But in or about 2010, the government policy on transport changed and required matatu operators to register a limited liability company or a SACCO under the Companies Act or the Co-operative Societies Act, respectively in order to carry out matatu business. In order to comply, the membership of the self-help group passed a resolution to turn the self-help group into a limited liability company. The 4th Defendant was born out of the name of and drew its membership from the original members of the self-help group. A copy of the regulations of the organization as at 15.11.2010 is attached as annexure JNM -2 to the Plaintiffs' supporting affidavit. However, the membership of the organization was restricted to owners of motor vehicles; the objective was to help all members materially in accordance with savings one has made; and on ceasing being a member, the contribution of such member would be refunded less all expenses incurred during the contribution period. The refunds were payable after the expiry of two (2) months from the date of notice to withdraw membership. The Plaintiffs claim that the defendants have unilaterally and unlawfully attempted to stop the plaintiffs'' vehicles to operate under the name of the 4th Defendant which is not only illegal but an attempt to deny the plaintiffs of their livelihood and rights. They also alleged that the Defendants have refused to account to the members of the daily collections as well as the way the company funds have been utilized. They alleged massive misappropriation of the company funds by the defendants. They also accuse the Directors of failing to convene a general meeting for purposes of accounting to the members despite resolution that there shall be quarterly meetings of the Company.

[13] The Directors of the 4th Defendant denied having any management agreement with the plaintiffs. They insisted that they are Management Company which must have a management agreement with any person who wishes to engage its services. And therefore, in the absence of such agreement, the plaintiffs cannot claim or use the name of the company in obtaining licences for transport business under the Regulations.

[14] From the arguments presented by both parties, there is clear manifestation of squabbles among

directors and members of the 4th Defendant. The Defendants have submitted that the Plaintiffs have not shown that they are members of the 4th Defendant. I expected the directors of the Company to present Form CR12 to court as a way of showing who the members of the 4th Defendant are, instead of making a general statement that the Plaintiffs have not proved they are members of the 4th Defendant. I am not shifting the burden of proof here. The material placed before the court clearly shows the manner in which the 4tth Defendant was incorporated, the objects and the membership thereof and the meetings of the company. Sufficient information has also been provided to the court on how the directors of the company were appointed by the members. And, therefore, it will be pretentious for the defendant directors who speak for the company not to provide necessary information on membership and meetings of the company; which should ordinarily be provided by them. The directors are not being entirely honest with the matters in issue. I reckon, however, that the Directors have some valid concerns against the plaintiffs but the way they are doing it is all wrong and contrary to the law. They are doing it at the exclusion of the members, by taking a posture of ''owners'' of the company. Directors act on behalf of and for the benefit of the company and account to the members through meetings of the company. Needless to say that, Directors of a company govern only through resolutions passed by members or by the directors in accordance with the powers donated by the Memorandum and Articles of Association of the Company. They should not act at the exclusion of all others like it seems to be the case here.

[15] The above notwithstanding, some of the orders being sought by the Plaintiffs, like injunction to restrain the directors from collecting the daily fees from the members is draconian as it would decimate the 4th Defendant completely. A court of law cannot make such order in an ordinary suit of this nature which is not a winding up cause. The complaints on misappropriation of funds of the company, and lack of accountability by the directors should first be addressed through the internal mechanisms of the company provided in the Memo and Articles of Association. This is done through members' resolution in a general meeting or an extra-general meeting properly requisitioned by the members in accordance with section 132 of the Companies Act. Court action only becomes feasible where conditions exist for, and a properly initiated derivative suit is filed by the members. But before I render my final decision on the relief sought, I should sufficiently address the subject of accountability of a company through meetings of the company by citing the following long but necessary rendition in the case of **Agricultural Development Corporation Of Kenya vs. Nathaniel K. Tum & Another [2013] eKLR** especially because the 4th Defendant has been accused of not convening meetings in accordance with resolution of members and the law that:-

Annual General meeting: KSC default

> ***[15] Accountability of a company to its shareholders and the law is an important facet in the operation of the corporate entity; which throws me back to the already familiar subject of corporate personality of a company as it is ordinarily taught in the early years of university education. I find myself re-stating the celebrated legal innovation in SALOMON & CO LTD v SALOMON [1897] A.C. 22 H.L.; that a company is a legal entity distinct from the its shareholders and the directors, in other words, it is a juristic person-a legal person- with corporate legal personality separate from those who compose it. Except, however, a company operates through human agents- the board of directors who are appointed in accordance with the Article of Association and registered with the Registrar of Companies. Therefore, the directors assume the responsibility of ensuring that the company abides by all legal requirements; all that will preserve its juristic personality and property; and avoiding default that would attract serious legal sanctions, or affect its juristic personality and assets. The legal requirements include; accountability of its business to the shareholders and to the law; operations; directorship; liabilities; assets; payment of taxes, only to mention but a few. Besides liability on the directors, if a company fails to observe the legal responsibilities and obligations set out in law, it will face serious legal penalties and sanctions; some default may occasion temporary disablement but there are others which are dire and may lead to its de-registration or winding-up. Should the gravest of the consequences for non-compliance with the law attach, the juristic existence of the company is decimated and the property may fall bona vacantia to the government.***

[16] One of the legal mechanisms of accountability by a company is annual general meeting. See Section 131(1) of the Companies Act below.

131 Annual general meeting

(1) Every company shall in each year hold a general meeting as its annual general meeting in addition to any other meetings in that year, and shall specify the meeting as such in the notices calling it; and not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next:

Provided that, so long as a company holds its first annual general meeting within eighteen months of its incorporation, it need not hold it in the year of its incorporation or in the following year.

[17] It bears repeating, that an Annual General Meeting serves two important purposes: in one sense as a mechanism for accountability to shareholders and the shaping of the business of the company; and in another sense as an act of compliance with the law. Accountability to the shareholders is best described by the activities which take place in an Annual General Meeting and include; presentation of profit and loss account, and balance sheet; relevant information on the assets and operations of the company; directorship; share dividend and public share issue, if any, is to be undertaken. Compliance with the law is assessed on the company's adherence to the legal requirements set out in the Companies Act especially the making of returns on its operations; the general meetings and resolution it has made during the year, tax returns, directorship of the company, shareholding and so on and so forth. If it does not do the things set out in law, the law has prescribed the penalty thereto.

[18] It is not in dispute that KSC has not held an Annual General Meeting since 2003. I am perplexed to note that, in spite of the difficulties it initially faced from the court cases, the company did not make any serious attempts to cause a general meeting to be convened particularly after the ''offending'' cases had been withdrawn. More trouble is found to fathom that it continued to carry out its business without caring to adhere to or make amends with the law; an act which exposed the company to serious legal penalties and sanctions under sections 125, 131 and 148 of the Companies Act. As a matter of great emphasis, that kind of operation by KSC was in contravention of the law and would entitle any member to seek redress in court; and such suit would certainly be considered within the exceptions to the rule in FOSS v HARBOTTLE (1843) 67 ER 189. But the court is mindful that KSC is a public company, which inclines the court to preserve the public property and investment in the company. Meanwhile, lapses such as the ones herein could be cured through an Annual General Meeting where appropriate resolutions are made and then returns are filed with the Registrar of Companies in accordance with the Companies Act. The court order made on 5.12.2013 just presented the company with that golden opportunity to carry out the amends during the General Meeting convened in accordance with the said order. Consider what the court stated when it delivered its partial decision on the matter that:

''The issues raised are serious; that a public company can run for that long without calling for an AGM. AGM, I agree with counsel for the Respondents, is one of, if not the single mechanism, through which a legal person accounts to its shareholders. Accountability is one of the requirements of the law, a company must abide by if it is to retain its juristic personality that has been given by law''.

Requisition of Extra-Ordinary General Meeting: S. 132 of the Companies Act.

[19] The second issue I should determine is about convening of extraordinary general meeting on requisition. The exercise is governed by section 132 of the Companies Act which provides:

(1) The directors of a company, notwithstanding anything in its articles, shall, on the requisition of members of the company holding at the date of the deposit of the requisition not less than one-tenth of such of the paid-up capital of the company as at the date of the deposit carries the right of voting at general meetings of the company, or, in the case of a company not having a share capital, members of the company representing not less than one-tenth of the total voting rights of all the members having at the said date a right to vote at general meetings of the company, forthwith proceed duly to convene an extraordinary general meeting of the company.

(2) The requisition must state the objects of the meeting, and must be signed by the requisitionists and deposited at the registered office of the company, and may consist of several documents in like form each signed by one or more requisitionists.

(3) If the directors do not within twenty-one days from the date of the deposit of the requisition proceed duly to convene a meeting, the requisitionists, or any of them representing more than one-half of the total voting rights of all of them, may themselves convene a meeting, but any meeting so convened shall not be held after the expiration of three months from the said date.

(4) A meeting convened under this section by the requisitionists shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors.

(5) Any reasonable expenses incurred by the requisitionists by reason of the failure of the directors duly to convene a meeting shall be repaid to the requisitionists by the company, and any sum so repaid shall be retained by the company out of any sums due or to become due from the company by way of fees or other remuneration in respect of their services to such of the directors as were in default.

(6) For the purposes of this section the directors shall, in the case of a meeting at which a resolution is to be proposed as a special resolution, be deemed not to have duly convened the meeting if they do not give such notice thereof as is required by section 141.

[20] For the sake of clarity, let me breakdown the important aspects of section 132 of the Companies Act. The section requires that:

1) A requisition should be deposited at the registered office of the company by members of the company.

2) The requisition notice must state the objects of the meeting, and must be signed by the requisitionists. It may be accompanied by other documents signed by the requisitionists.

3) The requisition for an Extra-Ordinary General Meeting should be by members who hold at the date of the deposit of the requisition not less than one-tenth of such of the paid-up capital of the company with the right of voting at general meetings of the company, or, in the case of a company not having a share capital, members of the company representing not less than one-tenth of the total voting rights of all the members having at the said date a right to vote at general meetings of the company.

4) The requisition for a meeting should require the directors to convene the meeting within 21 days.

5) It is only when the directors fail to convene a meeting within twenty-one days from the date of the deposit of the requisition that the requisitionists, or any of them representing more than one-half of the total voting rights of all of them, may themselves convene a meeting.

6) The meeting so convened must be held within three months of the expiry of the twenty one days given to the directors.

7) The meeting called by the requisitionists in accordance with (5) should adhere to the normal procedure for calling of a general meeting.

[21] Did the notice issued on 11.11.2013 convening an Extra-Ordinary General Meeting on 10th December, 2013 conform to the requirements of the law? Mr Alfred Nyairo without elaboration submitted the notice was proper. Mr Nyaencha, on the other hand, thought it did not and he cited two reasons; 1) that the notice dated 11.11.2013 did not give the mandatory 21 days to the directors; and 2) the said notice combined the two distinct steps in section 132 of the Companies Act and indeed called for a meeting straight away. On my part, I take the view that the notice fell far short of compliance with the law, and the non-compliance is a material one which cannot be diminished as a mere technicality, for it goes to the root of the company as a juristic person and the exercise of powers of management in a corporate entity. What is the nature of the violation? Although the notice stated the agenda for the meeting, it violated all the other principal legal requirements under section 132 of the Companies Act. The notice was not a requisition to the directors to convene an Extra-Ordinary General Meeting as required by section 132 of the Companies Act. Rather, it was a notice convening an Extra-Ordinary General Meeting on 10.12.2013. Section 132 is worded deliberately in a way that the directors are obliged to convene the meeting within 21 days of the depositing of the requisition at the registered office of the company, and it is only if they do not convene a meeting within the prescribed period that the right for members of a company to convene an Extra-Ordinary General Meeting themselves arises. There are good legal and practical reasons why the law in section 132 of the Companies Act has been so tailored. The procedure therein:

1) recognizes the legal personality of the company which is distinct from its shareholders- see SALOMON v SALOMON;

2) reinforces the legal mandate and authority of the directors to convene the meeting of the company at first instance in accordance with the company's Article of Association- see SHAW & SONS (SALFORD) LTD. v. SHAW [1935]2 K.B. 113, C.A and Article 80 of Table A;

3) Gives the directors notice to convene the meeting and the agenda for the meeting as well as the intention of the requisitionists to convene one in the event of default by the directors;

4) provides a statutory departure from the provisions of the Articles of Association and Article 80 of Table A on powers of management of a company, thus, providing the shareholders with a defined legal avenue and process to hold the company accountable in the event of directors' dilatory conduct in convening meetings; and

5) Avoids superfluity of Extra-Ordinary meetings at the whims of members without proper basis or adherence to the law.

Any material departure from the prescriptions of section 132 of the Companies Act, oozes out the essence of the law on corporate existence of a company; and therefore, I should state, the procedure adopted by the defendants is overly and extravagant interpretation of section 132 of the Companies Act. If that procedure prevails, it will not only flout the corporate law, but would open the company to superfluity of meetings. I say these things in order to re-establish jurisprudence on this law which is guided by a sense of proportion and regularity in corporate law; a chariness of proliferation of unnecessary meetings which are not grounded on applicable legal principles; and the need to avoid a practice that gives no promise of sustainability of a company as a legal person.

[20] Further, the notice disclosed two requisitionists without saying whether the two held not less than one-tenth of such of the paid-up capital of the company with the right of voting at general meetings of the company. I concur with Mr Nyaencha that the notice dated 11.11.2013 for the meeting scheduled for 10.12.2013, materially violated section 132 of the Companies Act. The requisition should conform to the law if the meeting is to be properly-convened under

section 132 of the Companies Act; or is to become the meeting of the company and the resolutions thereof should bind the company; and reasonable costs incurred by the requisitionists should be payable by the company.

[16] I will not add a word. The foregoing rendition of the Court settles the subject. There are serious issues being raised on accountability by and lack of meetings of the company. And when that situation arises, special circumstances are said to have occurred and the court can intervene and order a meeting of the company. Although the Plaintiffs stated that they convened a meeting, they did not show that it was convened pursuant to section 132 of the Companies Act and that it strictly followed the prescription of section 132. But, it is clear that the company has not convened meetings of the company as resolved by the members or as required in law. Clearly, the company violated the law on which legal relief may be granted by court. I will, therefore, order the 4th Defendant to hold a company meeting within the next 45 days from today to discuss all the issues being raised herein. Should they fail, members are at liberty to requisition a meeting in accordance with section 132 of the Companies Act. The issue of membership of the Company as well as appointment of directors is not properly before this court, and should be transacted and addressed in the meeting to be convened pursuant to this ruling. Meanwhile, a prima facie case exists for me to issue temporary relief of injunction and order that the Plaintiffs' vehicles shall continue to operate under the umbrella of the 4th Defendant until the resolution of the company in the meeting to be held in accordance with this ruling. All the other orders in the application have been denied. No orders as to costs given the circumstances of the case and the relief granted. It is so ordered.

Dated, signed and delivered in court at Nairobi this 21st day of April 2015

F. GIKONYO

JUDGE