



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
MILIMANI LAW COURTS
ELC NO. 300 OF 2013

GATEI WA NGANDA.....PLAINTIFF

VERSUS

KAMITI FARMERS COMPANY LIMITED.....1ST DEFENDANT

PENINAH WANJIRU KINYANJUI.....2ND DEFENDANT

WILSON MAINA NJENGA.....3RD DEFENDANT

THE COMMISSIONER OF LANDS.....4TH DEFENDANT

CHIEF LAND REGISTRAR.....5TH DEFENDANT

SIMON N. NJOROGE &

DANIEL GETHINJI.....PROPOSED INTERESTED PARTIES

RULING

Simon N. Njoroge & Daniel Gethinji filed an application dated *18th July 2014*, seeking an order for joinder to the proceedings as Interested Parties. The application is supported by an affidavit sworn by **Simon N. Njoroge**, wherein he deposes that he is the former chairman of *the Kamiti Farmers & Co. Limited* and that he together with **Daniel Gethinji, Peter Munene Ndegwa, Patricia Wanjiku Kibura, Wanjiku Kiarie, and Ibrahim Kamau Njenga** were the bona fide Directors of *Kamiti Farmers Co. Limited* as at *15th August 2012*. He deposes that during their tenure, transactions did take place including one involving the suit property and therefore it is necessary to join them to the suit to enable the court to hear them so as to make a just decision.

The Plaintiff swore a Replying Affidavit on *9th September 2014*, wherein he deposed that the application is frivolous, vexatious, bad in law and abuse of court process thus should be dismissed on the basis that first, the court made a determination of *27th August 2013* declaring that **Simon N. Njoroge** was not a bona fide chairman neither are the named persons bona fide directors of the *1st Defendant*. Secondly, the issue of bona fide officials of the *1st Defendant* is res judicata having been resolved by this court. Further, that the Applicants have failed to show any interest on the suit property or any valid reason that will flow

from their joinder. In any event, the Plaintiff deposed that should the Applicants wish to support any party's case their averments and representations can be made as witnesses at the hearing with the veracity of such averments tested through cross-examination.

In response to the annexure relied on by the Applicants as proof of Directorship as at 12th August 2012, the Plaintiff deposed that the said document was disowned by the Office of the Registrar through an affidavit sworn by **Francis Ndirangu**, the Assistant Deputy Registrar on 26th July 2013, when after the Court made a determination on the matter. Therefore, tendering the same document would amount to an abuse of the court process. It was deposed by the Plaintiff that the intention of the Applicants was to circumvent the order of the Court made on 27th August 2013. It was also deposed that the application was prejudicial and an attempt to delay the expeditious determination of the suit in view of the delay in which the application was filed.

The application was canvassed by way of written submissions. **Kulecho & Co. Advocates** for the intended Interested Parties filed submissions dated 10th October 2014, wherein counsel submitted that the involvement of the applicants in this case will only help the Court arrive at an effectual and just determination of the case and will not be prejudicial to the Plaintiff.

Waweru Gatonye & Co. Advocates for the Plaintiff filed submissions dated 15th October 2014, wherein counsel submitted that application is frivolous, vexatious and an abuse of the court process since it is made in order to circumvent the order issued by the Court on 27th August 2013, which order has not been set aside either on review or appeal. Counsel also submitted that the application is res judicata in view of the Directions of the Court of 27th August 2013 where in the Court found that the intended Interested Parties were not the bona fide Chairman and Directors of the 1st Defendant. It was submitted by counsel that an equitable or discretionary remedy cannot be granted to an applicant who approaches this court with unclean hands.

The Applicants seek that they be joined as interested parties on the basis that they were once officials of the company and some transactions did take place during their tenure. It is their averment that they have information which will be useful to enable the court make a proper determination on the dispute between the parties. Specifically, the 1st Applicant claims to have been the Chairman of the company whereas the 2nd Applicant a Director. In support of their application, the Applicants annexed several letters under reference CR 12 addressed to the 1st Defendant from office of the Registrar of Companies, the latest dated 4th September 2012, stating that as at 15th August 2012, the Applicants together with **Peter Munene Ndegwa, Patricia Wanjiku Kibura, Wanjiku Kiarie, and Ibrahim Kamau Njenga** were Directors of the 1st Defendant.

The application is opposed by the Plaintiff who made reference to the Directions of this court of 27th August 2013, contending that the matter was already settled. It is the Plaintiff's contention that it is now established that **Mbugua Kariuki** is the bona fide Chairman of the 1st Defendant. Further, the Plaintiff avers, that the intention of this application is to circumvent the Directions of the court and therefore an abuse of the court process.

I have perused the court record leading to the Directions issued by this court on 27th August 2013. The affidavit sworn by **Mbugua Kariuki** on 26th April 2013 reveals that the 1st Applicant was a chairman of the 1st Defendant from 2003 to 23rd March 2011 when an Annual General Meeting was held and presided over by the Senior Deputy Registrar General from the office of the Registrar of Companies. On this date elections were conducted and a new set of officials were elected, including **Mbugua Kariuki** as Chairman. This court summoned the office of the Registrar of Companies to give current status as to directorship and officials of the 1st Defendant. **Francis K. Ndirangu**, an Assistant Registrar of Companies swore an affidavit confirming that the officials elected on 23rd March 2011 are the bona-fide officials of the company according to the records at the Companies Registry. Further, that the CR 12 dated 4th September 2012 is a forgery.

It is indeed a fact that the Applicants were once officials of the 1st Defendant. It is also established that they are no longer the officials following the elections of 23rd March 2011. The question is whether the Applicants' presence is necessary to assist the court effectually and completely settle all questions involved in the suit. It is my view that the information on transactions undertaken during the Applicants' tenure are, or ought to be, tucked in company records which can be produced by the current officials. As a rule, Directors are the persons who have authority to act for a company, and the Applicants having been ousted as officials on 23rd March 2011, they have no authority to act for the 1st Defendant. It is my finding that the Applicants have not satisfied the requirements of **Order 1 Rule 10** to warrant this court to exercise its discretion in their favour.

Consequently, their application is dismissed with costs to the Plaintiff.

It is so ordered.

Dated, Signed and Delivered this 16TH day of APRIL 2015

L. GACHERU

JUDGE

In the Presence of:-

.....for the Applicants/Proposed interested parties.

.....For the Plaintiff/ Respondents

.....For the Defendants/Respondents

Hilda : Court Clerk

L. GACHERU

JUDGE