



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI COMMERCIAL & ADMIRALTY DIVISION**

**CIVIL SUIT NO. 551 OF 2013**

**HOTTENSIA WAMBUI HINGA.....1ST PLAINTIFF**

**WHITE COTTAGE SCHOOL LIMITED..... 2ND PLAINTIFF**

**V E R S U S**

**CATHERINE NUNGARI NDUKI MWANGI.....DEFENDANT**

**J U D G E M E N T**

1. This is the Judgement in the suit herein which was commenced by way of **Plaint** filed in court on **5th October 2013** and amended on 9th October 2014. The suit seeks the following orders:-
  - a. *A declaration that the substitution of directors and transfer of shares to the Defendant was unlawful and fraudulent hence the same is void.*
  - b. *An order directing the Registrar of Companies to expunge the names of the Defendant from the list of Directors or Shareholders of the Company.*
  - c. *An order directing the Registrar of Companies to reinstate Anne Wambui Ninyu and Roseline Wanjiku to the Company's Board of Directors.*
  - d. *General damages.*
  - e. *Exemplary damages.*
  - f. *Costs of the suit.*
  - g. *Any other relief that the Honorable court may deem fit and proper to grant.*
2. The suit despite being served was not defended. The Defendant failed to enter appearance or file a defence. This failure caused the Plaintiff to request for Judgment in default, which was entered on 19th January 2014. The suit then proceeded to formal proof on 13th October 2014 and on 9th March 2015.
3. The Plaintiff's Witness 1, the 1st Plaintiff herein, testified that together with her late husband Godfrey Hinga they incorporated Cottage School Limited on 9<sup>th</sup> July 1991, with the purpose of running schools among other business ventures. The two of them were founders, Directors and or shareholders of the company. They later registered Cottage School Limited with the Ministry of

Education Science & Technology on 15<sup>th</sup> August 1994 where the 1<sup>st</sup> Plaintiff was the Manager of the school. On 15<sup>th</sup> March, 2000 through a Special Resolution with the approval of the Registrar of Companies, Cottage School Limited was changed to White Cottage School Limited, the 2<sup>nd</sup> Plaintiff herein.

4. On 1<sup>st</sup> August, 2010 the 1<sup>st</sup> Plaintiff's husband Godfrey Hinga who was also the Managing Director passed on and the Certification of confirmed grant was issued to the 1<sup>st</sup> Plaintiff on 19<sup>th</sup> April 2012. After the death of Godfrey Hinga who was one of the two directors, the 1<sup>st</sup> Plaintiff remained as the sole director of the company. The Plaintiff testified that it was at this point that she was advised to appoint another director to assist her run and manage the 2<sup>nd</sup> Plaintiff and thus appointed her nieces Anne Wambui Minyu and Roseline Wanjiru Kairu as such with NIL shareholding.
5. The 2<sup>nd</sup> Plaintiff was healthy financial-wise and was running a nursery and a primary school. Sometime in 2011 the 1<sup>st</sup> Plaintiff suffered a stroke, when she elected to have her Sister, the Defendant herein to assist Anne Wambui Minyu and Roseline Wanjiru Kairu in managing the schools. It was at this juncture that the Defendant took advantage of the Plaintiff's condition and proceeded to make alterations to the management of the company by producing forged documents to the companies' registrar and mismanaging the 2<sup>nd</sup> Plaintiff's resources, leading to its closure.
6. During the trial, the 1<sup>st</sup> Plaintiff testified in her examination in chief that the only change she ever made on the 2<sup>nd</sup> Plaintiff was to include Anne Wambui Minyu and Roseline Wanjiru Kairu as Directors with NIL shares. She was the sole shareholder and the 1000 shares that initially belonged to Mr. Hinga were in the estate of the deceased. The Plaintiff further testified that she was not aware of any meeting that was held on the 4<sup>th</sup> July 2012 appointing the Defendant as the Director and did not sign the said minutes. Further to the above, the Defendant proceeded to prepare or cause to be prepared a Transfer of Shares or Stock in her favour and the Defendant knowing the same to be false represented it to the Registrar of Companies for registration, and the Registrar acted upon it.
7. The Defendant prepared a false Notice of Change of Directors and Secretaries Form 203 dated 6<sup>th</sup> July 2012 and rendered it to the Registrar of Companies who acted upon it. The Defendant knew that the document was a forgery aimed at misleading the Registrar and indeed misled the Registrar to effect the changes with the sole aim of benefitting the Defendant. Further the Defendant prepared various letters addressed to the Asset Manager CFC Stanbic Bank Limited and to the Manager Kenya Commercial Bank, Sarit centre and it is on the basis of these letters that the defendant was able to withdraw monies from the said accounts that were held by the 2<sup>nd</sup> Plaintiff.
8. The Witness testified that on the 9<sup>th</sup> July, 2012, the Registrar of Companies acting on false information prepared and presented to him by the Defendant, made changes to the List of Directors and allocated 1000 shares that belonged to Mr, Godfrey Hinga (deceased) to the Defendant. Consequently the Defendant caused the names of two other directors to be expunged from the list of directors without their consent.
9. Roseline Wanjiru, P.W. 2, one of the lawful directors testified that she had never resigned nor did she ever give any consent to be expunged from being the director.
10. It was submitted for the Plaintiffs that the law in this country is very clear that he who alleges a fact must prove the existence of that fact. This is well captured under section 107 of the Evidence Act CAP 80 of the Laws of Kenya, which states that ***whoever desires any court to give judgement as to any legal right or liability dependant on the existence of facts which he asserts must prove that those facts exist.*** The Plaintiff submitted that they had proved their case as required by law.
11. From the above, the issue for determination is whether the Plaintiff's signature was forged and presented to the Registrar or Companies as alleged by the P.W. 1 in her testimony.
12. I have considered the testimony of PW 1 and PW 2. Their testimony is corroborative of each other, and have not been disputed. There is no defence, and the Defendant has chosen not to testify. It is therefore safe to conclude that the Defendant either has no defence or that the defence she could be having cannot challenge the evidence provided by the Plaintiff.
13. On a balance of probability I find that the Plaintiffs have proved their case, and deserve the orders they seek. However, the prayer on general damages and exemplary damages have not detailed. The Plaintiff while alleging to have suffered damages, has not provided the extent of damages

which should be paid to it. The only damages alluded to are rents which the Plaintiff had to pay for the premises, and various allegations of mismanagement by the Defendant. It is therefore difficult to assess damages. However, I am satisfied that the Defendant mismanaged the schools and the business, and that she should be held liable in damages which I hereby assess at Kshs.3,000,000/= going by the rents paid for the premises and lost business opportunities. In the upshot, I enter judgement as follows:-

- a. ***A declaration that the substitution of directors and transfer of shares to the Defendant was unlawful and fraudulent hence the same is void.***
- b. ***An Order directing the Registrar of Companies to expunge the name of the Defendant from the list of Directors or Shareholders of the Company.***
- c. ***An Order directing the Registrar of Companies to reinstate Anne Wambui Minyu and Roseline Wanjiru Kairu to the Company's Board of Directors.***
- d. ***General damages of Kshs.3,000,000/=.***
- e. ***Costs shall be to the Plaintiff.***
- f. ***Interests in the general damages (d) above and on costs (e) above at court rates from the date of this Judgment until payment in full.***

That is the judgment of the court.

Orders accordingly.

**READ, DELIVERED AND DATED AT NAIROBI**

**THIS 29TH DAY OF MAY 2015**

**E. K. O. OGOLA**

**JUDGE**

**PRESENT:**

M/s Mathenge holding brief for Wakoko for the Plaintiffs

No appearance for the Defendant

Teresia – Court Clerk