



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MACHAKOS**

**CIVIL CASE NO. 2 OF 2014**

WENDANO MATUU CO. LIMITED.....1<sup>ST</sup> PLAINTIFF

STEPHENE NDAMBUKI MULI.....2<sup>ND</sup> PLAINTIFF

ONESMUS MUISYO KIMATU.....3<sup>RD</sup> PLAINTIFF

**VERSUS**

JOSHUA KIMEU KIOKO.....1<sup>ST</sup> DEFENDANT

JAMES KIOKO KIVUVO.....2<sup>ND</sup> DEFENDANT

JOHN BOSCO NDIINGA.....3<sup>RD</sup> DEFENDANT

SAMUEL MWANZA NZIOKA.....4<sup>TH</sup> DEFENDANT

JUVENALIS MUSYOKI KAVITA.....5<sup>TH</sup> DEFENDANT

MANGU NGOLO.....6<sup>TH</sup> DEFENDANT

ROSE NDANU MUTUA.....7<sup>TH</sup> DEFENDANT

**RULING**

1. The suit herein was instituted by the firm of Laichena Mugambi & Co. Advocates. The 1<sup>st</sup> Plaintiff sued as the duly incorporated company under The Companies Act, Cap. 486 Laws of Kenya. The 1<sup>st</sup> and 2<sup>nd</sup> Plaintiff were stated to be the duly elected and registered directors of the 1<sup>st</sup> Plaintiff.
2. The Plaintiff's case against the Defendants is that the Defendants illegally convened a meeting in which they were purportedly elected as the directors of the 1<sup>st</sup> Plaintiff. That the Defendants misled the Registrar of Companies and were listed as the directors of the 1<sup>st</sup> Plaintiff. That the Defendants are now carrying out the affairs of the 1<sup>st</sup> Plaintiff as the purported duly elected directors.
3. The Plaintiffs have sought orders of injunction to restrain the Defendants from acting as the directors or officials of the 1<sup>st</sup> Plaintiff, a declaration that the directors of the 1<sup>st</sup> Plaintiff included the 2<sup>nd</sup> and 3<sup>rd</sup> Plaintiff and an order for fresh elections.
4. An application dated 17<sup>th</sup> January 2014 was filed simultaneously with the plaint seek temporary

orders of injunction against the Defendants.

5. On 7<sup>th</sup> March 2014, the firm of Kivuitu Maundu & Co. filed a Notice of appointment of Advocates on behalf of all the Defendants. A notice of change of Advocates for the first Plaintiff was also filed by the firm of Kivuitu Maundu & Co. Advocates. A Notice of discontinuance of suit by the 1<sup>st</sup> Plaintiff was also filed on the same day by M/s Kivuitu Maundu & Co. Advocates. The notice reads that the 1<sup>st</sup> Plaintiff has no legally recognized relationship with the 2<sup>nd</sup> and 3<sup>rd</sup> Plaintiffs and has forthwith discontinued its claim against the Defendants who are its elected directors duly registered with the Registrar of Companies.

6. Subsequently, on 18<sup>th</sup> March, 2014, the Defendants filed a replying affidavit in response to the application dated 17<sup>th</sup> January, 2014.

7. However, when the application came for hearing, both Mr. Laichena for the Applicants and Ms Kilonzo of Kivuitu Maundu & Co. Advocates for the Respondents informed the court that they appeared for the company (*1<sup>st</sup> plaintiff*). It became apparent that the court had to determine who is the proper Advocate on record for the company. The parties filed written submissions on the issue. I have considered the said rival submissions.

8. It is trite law that a company is a legal entity which is separate from its directors and shareholders. The company is however an inanimate legal person and can only act through its directors. The bone of contention herein is who the directors of the 1<sup>st</sup> Plaintiff are. It is therefore not possible to make a determination on the matter without determining the principal issue herein which is who the current directors of the company are. The court cannot appoint an advocate for a party. The company as a party herein is entitled to be represented by an advocate of its choice.

9. The firm of Laichena Mugambi & Co. Advocates filed the suit herein on behalf of all the Plaintiffs. The Defendants have been sued allegedly for being in the office irregularly. The appointment of the firm of Kivuitu Maundu & Co. Advocates is therefore in the same breath questionable. The notice of change of Advocates by Kivuitu Maundu & Co. Advocates to act for the company (*1<sup>st</sup> Plaintiff*) and the notice of discontinuance of suit by the company (*1<sup>st</sup> Plaintiff*) against the Defendants at this stage is therefore irregular. If the evidence adduced later establishes who the company's authorized officers are, then the question of representation will be automatically sorted out. In the meantime, I will strike out the Notice of Change of Advocates and the Notice of Discontinuance of suit filed by the firm of Kivuitu Maundu & Co. Advocates on behalf of the 1<sup>st</sup> Plaintiff.

Costs in cause.

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**B. THURANIRA JADEN**

**Dated and delivered** at Machakos this 20<sup>th</sup> day of May, 2015

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**B. THURANIRA JADEN**

**JUDGE**