



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**COMMERCIAL & COMMERCIAL COURTS**  
**CIVIL SUIT NO. 235 OF 2013**

**KAMUINGI HOUSING COMPANY LIMITED.....PLAINTIFF**

**-VERSUS-**

**THE REGISTRAR OF COMPANIES.....1<sup>ST</sup> DEFENDANT**

**THE HON. ATTORNEY GENERAL.....2<sup>ND</sup> DEFENDANT**

**AND**

1. **WAMBUI KINUTHIA**
2. **MARGARET WANJIKU**
3. **RACHEL WANJIKU**
4. **FRANCIS GACHERU IKUNDU**
5. **MWANGI KIAMBATI**
6. **FRANCIS MUTURI**
7. **WANYOIKE MURAGURI**
8. **GEOFFREY KARANJA**
9. **WAINAINA MUTINGA**

**10.HANNAH WANJIKU.....1<sup>ST</sup> INTERESTED PARTIES**

**AND**

1. **DUNCAN NDEGWA WARUI**
2. **GEORGE MAINA MWANGI**
3. **STANLEY GITAU MWANGI**
4. **DAVID KIMANI MURIGI**
5. **CHARLES MAINA GITHAIGA**
6. **PAUL KIHUNGI KAMAU**
7. **NAHASHON WAWERU NDUATI**
8. **JAMES MWANGI MAINA**
9. **JULIUS MAINA JOHN**

**10.CATHERINE MILKAH WANJIRA MWANGI**

**11.CECILIA WANJIKU KIMANI**

**12.NDURURUMO WANYIKA WACHIRA**

**13.MERCY WANGARI NDEGWA**

**14.DANIEL GITHAIGA MULI MAINA**

**15.ROSE WAMBUI WAWERU**

**16.ANDREW PHILIP MAINA**

**17.JOSEPH NJAU NGENDO/TERESIA NYAMBURA NGENDO**

**18.GEOFFREY KARANJA NJUIRI**

**19.JOSPEH CHEGE WAINAINA**

**20.KARIU GECHHE.....2<sup>ND</sup> INTERESTED PARTIES**

### **RULING**

1. The Plaintiff's application dated 26<sup>th</sup> March 2014 seeks the setting aside or the variation of the court orders dated 15<sup>th</sup> November 2015.
2. It was the plaintiff's contention that unless the said order were either varied or set aside, the plaintiff, **KAMUINGI HOUSING COMPANY LIMITED**, would be left rudderless.
3. The understanding of the plaintiff was that the company could not organize its elections in the absence of directors, as it the directors who were the custodians of all the records of the company.
4. Therefore, if elections were to be held in the absence of the directors, the plaintiff's fear was that many people who were not members of the company could participate in the elections.
5. The participation of non-members in the affairs of the company was seen, by the plaintiff, as a sure way of causing a break-up of the company.
6. Another worry of the plaintiff was that some people who had vested interests could take advantage of the vacuum, caused by the removal of the directors, to play mischief.
7. As far as the company was concerned, the Registrar of Companies had no capacity to determine the genuine members of the company. The reason why the Registrar is said to lack the requisite capacity is that the Registrar of Companies does not have the records from which he could derive accurate and complete information concerning members of the company.
8. The absence of such accurate and complete records would lead to a situation where the Registrar could allow non-members to take part in the company's affairs, thus leading to further and deeper problems for the company.
9. These are the reasons which prompted the company to ask the court to put in place a better mechanism for the transparent vetting of persons who lay claim to being members of the company.
10. In the supporting affidavit, **JAMES GITHINJI WAMBUGU**, said that the directors of the company had no objection to the holding of elections. Their only concern was that the persons to be allowed to participate in the said elections should be bona fide members of the company.
11. The plaintiff considers as strangers, the persons who had sought and obtained the orders in issue.
12. In response to the application, the 1<sup>st</sup> Interested parties, (comprising **WAMBUI KINUTHIA & 10 OTHERS**), stated that the company did not have any legitimate directions as no elections had been conducted for the management Team for a period of 16 years.
13. It was the failure by the company to hold elections for over 16 years which was said to have prompted the Interested Parties to come to court, to seek orders to compel the company to conduct elections.
14. If, as the 1<sup>st</sup> Interested Parties opine, that because there had been no elections for over 16 years, it

- would lend credence to the 1<sup>st</sup> Interested Parties' contention, that the legitimacy of the directors of the company was doubtful.
15. The respondents also submitted that **JAMES GITHINJI WAMBUGU** did not represent the company, either as the company secretary or in any other capacity.
  16. It will be recalled that the affidavit in support of the application in issue was sworn by **JAMES GITHINJI WAMBUGU**. Therefore, if his status was not founded upon a solid foundation, there would be no evidence to support the application dated 26<sup>th</sup> March 2014.
  17. The respondents also pointed out that **JAMES GITHINJI WAMBUGU** had taken part in all the processes prior to and in relation to the General Meeting held on 21<sup>st</sup> February 2014.
  18. It was only after the Registrar of Companies had shut out Mr. Wambugu from the General Meeting, that he came to court.
  19. The respondents perceive the conduct of Mr. Wambugu to be a reflection of his suspicious behaviour, which only surfaced after he had failed to manipulate the system devised by the Registrar of Companies.
  20. In any event, the respondents believe that the application had been overtaken by events, as the meeting ordered for by the court had already taken place on 21<sup>st</sup> February 2014.
  21. The order in issue was worded as follows;

**“1. THAT the application be and is certified as urgent.**

**2. THAT the meeting called by the Registrar for 11.00 a.m on 21/2/2014 shall proceed but will be limited to the Registrar establishing just who are the shareholders of the company in accordance with Note (b) of the notice calling the meeting.**

**3. THAT thereafter the Registrar will come before the court by way of mention on 5<sup>th</sup> March 2014, with a full report as regards the proper shareholders of the Company.**

**4. THAT at the mention the court will give further directions as to the calling of the General Meeting of the Company”.**

22. In order to put the order in perspective, it is noted that the Notice calling the meeting was dated 15<sup>th</sup> January 2014, and Note (b) in the said Notice read as follows;

***“Members and proxies of members eligible to attend and vote MUST produce the Original Share Certificates and Original National Identity Card to participate in the meeting and in any note or business to be undertaken”.***

23. When canvassing the application both the applicant and the respondents did so on the understanding that it was an application for review. Therefore, in determining the application, the court will proceed on the same footing.
24. It is the plaintiff's case that when the court stopped the company's elected officials from discharging their duties, the company was left with no leaders.
25. Obviously, when a company lacks leaders, it would be unable to carry out some of its functions. However, the question which must first be addressed is that which relates to the category of leaders who were stopped from carrying out their duties. I say so because a company can have various categories and cadres of leaders. Examples of leaders are the Chairman; the Managing Director; the Company Secretary; and the Board of Directors.
26. In this case, the order in issue allowed the Registrar of Companies to call for the Company's Annual General Meeting. As the function for calling for Annual General Meetings is usually vested on the Board of Directors, by allocating the function to the Registrar of Companies, the court had effectively side-lined the Directors from that task.
27. But the learned Judge cannot be said to have stopped the directors from performing any of their other roles or functions. Accordingly, I find no merit in the contention that the company had been

- rendered rudderless.
28. In any event, the learned Judge gave to the Registrar of Companies a very limited mandate. The function of the Registrar was only to establish the shareholders of the company.
  29. Thereafter, the Registrar was required to return to court, to seek further instructions.
  30. In effect, at the meeting which the Registrar was to be responsible for, there would be no elections.
  31. I also find that there was no court order barring the company, its directors or its share holders from making available information and evidence to enable the Registrar compile an accurate and complete register of all the members.
  32. The Directors do not have to have the mandate to call for the meeting, for them to provide the requisite information.
  33. Similarly, the shareholders do not have to have any other status in the company, to enable them make available information to the Registrar, for use in compiling the register of members.
  34. If the Directors, the share-holders or the company secretary choose to withhold information from the Registrar, they would have themselves to blame if the Registrar's compilation of the Register of Members was either incomplete or inaccurate.
  35. To my mind, there are at least two distinct groupings of persons who consider themselves as constituting the genuine members of the company.
  36. If either of those groupings were to be given the responsibility of compiling the list of the genuine members of the company, there was a real danger that that group could use its position to bar those who had competing interests.
  37. I believe that that is the primary reason why the learned Judge mandated an independent person, the Registrar of Companies, to compile the register of members.
  38. The applicant has not demonstrated that it has become aware of any new evidence or material which could have caused the court to arrive at a different decision, if such evidence or material had been provided to the court prior to the time when the court made the decision which is now in issue. Therefore, there is no reason to warrant the review of the ruling in issue.
  39. I also note that on 28<sup>th</sup> March 2014, the Registrar of Companies filed a Report in court, providing information about what had transpired on 21<sup>st</sup> February 2014. From the report, it is clear that on 21<sup>st</sup> February 2014, the Company held its General Meeting at the **TOM MBOYA HALL**, off Jogoo Road.
  40. In the light of the fact that the meeting had already been conducted in accordance with the orders which the court made on 15<sup>th</sup> November 2013, it would not serve any purpose to vary or to review the said court orders.
  41. Finally, I hold the considered view that neither the order dated 15<sup>th</sup> November 2013 nor the meeting held on 21<sup>st</sup> February 2014 could prejudice any of the genuine members of the company. I so hold because the parties still have an opportunity, when the case next comes up in court, to have their say, with a view to influencing the course which the court would take on the issue concerning the determination of the final register of members.
  42. As the Registrar of Companies had already complied with the orders dated 15<sup>th</sup> November 2013, this court hereby receives and adopts the recommendations contained in the Report dated 27<sup>th</sup> March 2014.
  43. By necessary implication, therefore, the application dated 26<sup>th</sup> March 2014 is dismissed, with costs to the Respondents.
  44. I direct that the case will now proceed to be listed for further Directions on how the court can best facilitate the finalization of the process of compiling the register of members.

It is so ordered.

**DATED, SIGNED and DELIVERED at NAIROBI this 21<sup>st</sup> day of December 2015.**

**FRED A. OCHING**

**JUDGE**

**Ruling read in open court in the presence of**

No appearance for the Plaintiff

No appearance for the 1<sup>st</sup> Defendant

Gachuna for Adow for the 2<sup>nd</sup> Defendant

Collins Odhiambo – Court clerk