



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ENVIRONMENT AND LAND COURT MISC. APP. NO. 12 OF 2014

HENRY WAINAINA KIHORO

..... **1ST**
PLAINTIFF

ELIJAH NGUGI NJOROGE

..... **2ND**
PLAINTIFF

GITHUNGURI CONSTITUENCY RANCHING CO. LIMITED

RUIRU3RD PLAINTIFF

VERSUS

JOHN MAINA MBURU

.....
..... **1ST DEFENDANT**

BOARD OF DIRECTORS GITHUNGURI CONSTITUENCY RANCHING CO. LIMITED

RUIRU 2ND DEFENDANT

RULING

1. What is before me for determination is the defendants application by way of Notice of Motion dated 12th January 2015, in which the defendants are seeking an order to commit the 1st plaintiff herein **Henry Wainaina Kihoro** to civil jail for disobeying this court’s order made on 6th November 2014 with regard to the arrangement of Annual General Meeting of the Githunguri Constituency Ranching Company Limited (hereinafter also known as “the company”). The defendants’ application is supported by the affidavit of the 1st defendant sworn on 3rd March 2015. In the affidavit, 1st the defendant deponed that initially, the plaintiff filed an application challenging the holding of an annual general meeting of Githunguri Constituency Ranching Company Ltd scheduled for 18th January 2014 on grounds that the same had been illegally and unlawfully convened. The defendants responded to the plaintiff’s application, the court heard the application substantively by way of written submissions and in a ruling dated 6th November 2014 the court made the following orders:-

- i. **THAT the defendants/respondents shall arrange to have an annual general meeting of the company held within the next 90 days from the date of the ruling**
- ii. **THAT an officer or representative from the Registrar General’s office shall superintend at the meeting and will be the returning officer during the conduct of the elections to the elect**

directors of the company.

- iii. **THAT the OCS Ruiru Police Station and the Kiambu County Commissioner are hereby directed to provide adequate security during the elections of Githunguri Constituency Ranching Company Ltd at the Matopeni Primary School Grounds.**
- iv. **THAT the representative of the Registrar General will be in consultation with the respondents certify the shareholders register to be used during the elections at the Annual General Meeting.**
- v. **THAT the matter be mentioned on 18th February 2015 for further orders and directions.**

2. The 1st defendant depones that in compliance with the above orders, they wrote to the Register General and gave notice of an Annual General Meeting to be held on the 15th January 2015 and even proceeded to book a venue for the meeting being Matopeni Secondary School and procured a permit for the same from the OCS Ruiru Police Station. That notwithstanding, the defendants aver that the 1st plaintiff in utter disobedience of the court order and directions the court made on 6th November 2014, proceeded, to arrange and call for a parallel Annual General Meeting of the company by issuing a notice thereof which he published on 31st December 2014 in the Nation Newspaper calling for a meeting on 16th January 2015.
3. Consequently, that this court issued an order stopping the said meeting on the 8th January 2015 and simultaneously granted leave to cite the 1st plaintiff for contempt of court. The defendants further aver that inspite of the court order of 6th November 2014 the 1st plaintiff in defiance of the order proceed to open a parallel office of the Githunguri Constituency Ranching Company Limited on land registered in his name being **Ruiru/Ruiru East Block I/2405** which the defendants aver was intended to undermine the operations of the company, import confusion in the minds of the members and to facilitate fraudulent dealings of the properties and shares held by the company.
4. The defendants aver that the above actions by the 1st plaintiff have been taken out in clear disobedience of the order of the court made on 6th November 2014 which found that the defendants herein are the bona fide directors of the company and that any other directors could only be appointed in an Annual General Meeting of the company which would be carried out in the manner provided for in the said ruling. The defendants therefore contend that unless the plaintiffs are restrained by this court their actions are likely to cause confusion in the membership of the company thereby causing irreparable damage and loss to the members and records of the company.
5. The defendants' application is opposed by the plaintiff. Through a replying affidavit dated 27th April 2015 the 1st plaintiff has deponed in his capacity as the director and secretary of the company that consequent to the ruling and directions made by the honourable court on 6th November 2014 and in his capacity as director and secretary of the company, he set in motion the process of organizing an Annual General Meeting for the purposes of conducting elections as directed by the court. He thus contended that by setting in motion the process of organizing for an annual general meeting, he was not acting in contempt of court hence he termed the orders sought by the 1st defendant in his application dated 12th January 2015 as misconceived and an abuse of the court process.
6. When the matter came before me on 17th may 2015, it was agreed among other directions that the above application be argued by way of written submissions. Both counsels representing both parties have duly filed their submissions. I have read and considered the defendants application and annexures, the plaintiff's replying affidavit and the written submissions filed by both parties.
7. **Determination**

The twin issues to be determined by this court is whether the plaintiff is indeed in contempt of the orders issued by this court on 6th November 2014 and whether the 1st and 2nd plaintiffs have irregularly and unlawfully opened parallel offices for the company. The law on contempt of court is now fairly settled. The onus is upon the applicant to prove the elements of contempt complained of. The proof must be above a balance of probability but not beyond any reasonable doubt. See the holding in the Court of Appeal case of **Mutitika –vs- Baharini Farm Ltd [1985] KLR 227**, where

the court stated that the standard of proof in contempt proceedings must be higher than proof on a balance of probabilities, and almost but not exactly beyond reasonable doubt. The defendants in this case had a duty to prove that the court did issue an order with regard to the arrangement of an Annual General Meeting of the company. It is not disputed that the court issued the following orders on 6th November, 2014:

- a. **THAT the defendants/respondents shall arrange to have an Annual General Meeting of the company held within the next 90 days from the date of the ruling.**
- b. **THAT an officer and/or representative from the Registrar General's office shall superintend at the meeting and will be the returning officer during the conduct of the elections to the elected directors of the company.**
- c. **THAT the OCS Ruiru Police Station and the Kiambu County Commissioner are hereby directed to provide adequate security during the elections of Githunguri Constituency Ranching Company Ltd at the Matopeni Primary School grounds.**
- d. **THAT the representative of the Registrar General will be in consultation with the respondents and certify the shareholders register to be used during the elections at the annual general meeting.**
- e. **THAT the matter be mentioned on 18th February 2015 for further orders/directions.**

The said order was extracted and served upon the plaintiffs. The order had a penal notice warning the plaintiffs that if they disobey the same they would be liable to be punished by the court. The question is whether the plaintiffs were served with the court order and/or had knowledge, notice and contents of the order and if so whether they willfully disobeyed the order.

8. In the present case the plaintiff was well aware of the above order issued by the court on 6th November 2014. I say so because of the following:
 1. **The said order was made in the presence of 1st plaintiff and his advocate on record Dr. Kiama Wangai**
 2. **The 1st plaintiff through his advocate on record filed a Notice of Appeal against the above ruling (order) dated 6th November 2014 and in my view the filing of the said appeal is an express admission of knowledge of the existence and contents of the ruling of the court made on the 6th November 2014.**
 3. **Further, the 1st plaintiff in the Notice of Annual General Meeting made on 31st December 2004 did in fact cite and refer to the order of this court made on the 6th November 2014..**

Lenaola J. in Basil Criticos –vs- Attorney General & 8 Others [2012] eKLR, stated; “The law has changed and as it stands today knowledge supersedes personal service. Where a party clearly acts and shows that he had knowledge of a court order, the strict requirements that personal service must be proved is rendered unnecessary.”

9. The 1st plaintiff in his replying affidavit opposing the above application for contempt of court by the defendants, the 1st plaintiff purported to swear the same in his capacity as director/secretary of the company. Upon perusal of the court record it is evident that the 1st plaintiff (Henry Wainaina Kihoro) was the plaintiff/ applicant in the application dated 15th January 2014 whereas John Maina Mburu was the defendant/ respondent together with the company. This application sought an order staying the conveying and holding of the Annual General Meeting of the company. The said application was dismissed and the court directed the defendants (who are the applicants herein) to proceed and convene an Annual General Meeting as per the order dated 6th November 2014. Thus the reference to the defendants in the order dated 6th November 2014 was not in reference to the 1st plaintiff but was directed to the 1st defendant in the application, **John Maina Mburu** and Company's Board of Directors. The 1st plaintiff could not usurp the responsibility and obligation that was given to the defendants aforementioned.

10. The 1st plaintiff on his part has not controverted the above allegations by the defendants. The Court of Appeal in **Justus Kariuki Mate & Another –vs- Martin Nyaga Wambora & Another [2014] eKLR** cited **Lord Cottentam L. C in Chuck –vs- Cremer (1) Coop Temp. Cott 342** where it was held:-

“A party who knows of an order, whether null or valid, regular or irregular cannot be permitted to disobey itIt would be most dangerous to hold the suitors or their solicitors, could themselves judge whether an order is null or valid whether regular or irregular. That they should come to court and not take it upon themselves to determine such a question. That the course of a party knowing of an order, which was null or irregular, and who might be affected by it, was plain. He should apply to court that it might be discharged. As long as it exists, it must not be discharged.”

11. Similar sentiments were echoed in **Refrigeration and Kitchen Utensils Ltd Gulabchand Popartial Shah & Another, Civil Application No. 39 of 1990** held:-

“It is essential for the maintenance of the rule of law and good order that the authority and dignity of our courts is upheld at all times.”

This court notes that the company herein has been in turmoil owing to challenges and wrangles regarding its management since there have been applications and counter applications all filed revolving on how the company should be managed.

12. Decision

After evaluating the material and facts placed before the court I have come to the conclusion that the plaintiffs were well aware of the orders given by this court on 6th November 2014 and that notwithstanding decided to open a parallel office trading in the same name as the company herein. The 1st and 2nd plaintiff/ respondents had absolutely no right to set up, operate and run a parallel office in the name of Githunguri Constituency Ranching Company Limited as they purported to do. The court in the premises directs and orders the closure of any such office or offices that may have been opened by the 1st and 2nd plaintiffs on the building erected on land parcel **Ruiru/Ruiru East Block I/2405** or at any other place. While the 1st plaintiff, Henry Wainaina Kihoro, is shown as having been elected as a director of the company and his name appears in the list of directors as per the registrar of companies letter dated 28th January 2014, he cannot properly act alone without the sanction of the board of directors. Thus his action of orchestrating the opening of a parallel office of the company was without authority and therefore invalid as was his action of purporting to convene an annual general meeting of the company.

13. The 1st plaintiff, Henry Wainaina Kihoro, clearly in breach of the court order of 6th November, 2014 went ahead and purported to convene the annual general meeting of the company when he knew, he had no authority and mandate to do so. He was fully aware of the court order of 6th November 2014 and deliberately chose to act in defiance and contravention of the order. I hold that he acted in contempt of court in deliberately disobeying the court order and is accordingly liable to be punished for contravening the court order. I order that the 1st plaintiff, Henry Wainaina Kihoro pays a fine of **kshs. 50,000/=** within 15 days from the date of delivery of this ruling failing which the said 1st plaintiff is to be arrested and committed to civil jail for a period of 30 days from the date of such committal for contempt of court.

14. I make no order for costs of the applications.

Ruling dated and signed at Kisii this 11th day of November 2015.

J. M MUTUNGI

JUDGE

Ruling **delivered** at **Nairobi** this **11th** day of **December 2015**.

S. OKONG'O

JUDGE

In the presence of:

N/A for the 1st, 2nd and 3rd applicants

N/A for the 1st and 2nd defendants

S. OKONG'O

JUDGE