



**REPUBLIC OF KENYA**

**High Court at Nairobi (Nairobi Law Courts)**

**Petition 592 of 2012**

COLUMBUS MAKOKHA SHIUNDU.....1<sup>ST</sup> PETITIONER  
ISAIAH MUSUNGU NAMBIKHWA..... 2<sup>ND</sup> PETITIONER  
MARTIN K. MULAMA.....3<sup>RD</sup> PETITIONER  
DAVID ASHIAMA JUMA.....4<sup>TH</sup> PETITIONER  
MUSA CHICHOLE MAHERO.....5<sup>TH</sup> PETITIONER  
MWAJUMA NYAROTSI NAMATSI.....6<sup>TH</sup> PETITIONER  
JOHN WANINGU WERE.....7<sup>TH</sup> PETITIONER  
IMMANUEL WERE WANINGU.....8<sup>TH</sup> PETITIONER  
RAPHAEL JUMA MATETE.....9<sup>TH</sup> PETITIONER  
MUSA M MAKOKHA.....10<sup>TH</sup> PETITIONER

**AND**

PATRICK OKUKU.....1<sup>ST</sup> RESPONDENT  
KENNEDY ECHESSA.....2<sup>ND</sup> RESPONDENT  
GABRIEL ATOKO.....3<sup>RD</sup> RESPONDENT  
GEORGE AMBUCHE.....4<sup>TH</sup> RESPONDENT  
BASIL KHALUMI MISANGO.....5<sup>TH</sup> RESPONDENT  
FRANCIS WASHIKA.....6<sup>TH</sup> RESPONDENT  
ALPHONSE BWIRE.....7<sup>TH</sup> RESPONDENT  
GABRIEL ANAMANJIA.....8<sup>TH</sup> RESPONDENT

JUSTINA RAPANDO.....	9 <sup>TH</sup> RESPONDENT
GREGORY MAKOKHA WERE.....	10 <sup>TH</sup> RESPONDENT
MUMIAS OUTGROWERS COMPANY (1998) LTD.....	11 <sup>TH</sup> RESPONDENT
VINCNENT SAMBULA.....	12 <sup>TH</sup> RESPONDENT
AUGUSTINE SAKWA.....	13 <sup>TH</sup> RESPONDENT
DAN MUSUKU.....	14 <sup>TH</sup> RESPONDENT
CHARLES OKUKU.....	15 <sup>TH</sup> RESPONDENT
FRANCIA BASIL KHALUMI .....	16 <sup>TH</sup> RESPONDENT
ALEXANDER WAMALILI.....	17 <sup>TH</sup> RESPONDENT
ALI MUTIMBA.....	18 <sup>TH</sup> RESPONDENT
REGISTRAR OF COMPANIES .....	19 <sup>TH</sup> RESPONDENT

### RULING

1. This petition concerns the election of directors of Mumias Outgrowers Company (1998) Ltd. It is a public company that represents and promotes the interests of sugarcane framers within the Mumias Zone, Kakamega County. When this petition came up for directions, I directed counsel for the petitioners to show cause why this matter should not be transferred to the Kakamega High Court for hearing and disposal.
2. Prof Ojienda, S.C., for the petitioners contended that this matter is primarily against the Registrar of Companies, whose offices are situated in Nairobi and the case does not involve matters of taking evidence. According to counsel, the physical presence of the respondents is unnecessary as the matters are purely of a legal and constitutional nature. Mr Lutta, counsel for the company and some of the respondents, opposed the application primarily on the basis that the elections which are subject of the case are also the subject of ongoing litigation particularly in *Kakamega HCCC NO. 122 of 2011* where the High Court has made several decisions on the matter.
3. In my view, the proper forum for the hearing of this case is in the Kakamega High Court. My decision is based on several reasons. First, the existence of *Kakamega HCCC No 122 of 2011* and attendant litigation. This litigation may have a bearing and effect on these proceedings and it is proper that the judge in Kakamega should have regard to these proceedings.
4. Second, is the issue of access to justice which is a right protected under **Article 48** of the Constitution. A case such as this is of particular public interest and where a company has at least 70,000 members, it is important that its members are able to attend court without the inconvenience of costs. The right of access to justice means that litigation is no longer a preserve of the lawyers and judge exchanging technical legal arguments but also involves the public who are able to follow legal proceedings affecting them at their convenience.
5. Thirdly, devolution of power is one of the national values and principles recognised under **Article 10** and the convenience of otherwise of the Registrar of Companies must be subordinated to the right of access to justice and of public officers to attend to their duties outside their offices. The Registrar of

Companies as a public office is able to attend court in Kakamega.

6. I therefore order that this suit be and is hereby transferred to the High Court, Kakamega for hearing and disposal. Costs shall be in the petition.

**DATED** and **DELIVERED** at **NAIROBI** this 4<sup>th</sup> day of January, 2013

**D.S. MAJANJA**  
**JUDGE**

Prof. Ojienda, S.C instructed by Prof. Tom Ojienda and Associates Advocates.

Mr Lutta instructed by Lutta and Company Advocates for the 3<sup>rd</sup>, 4<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup> and 11<sup>th</sup> respondents.