



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Civil Case 449 of 2011

JOSEPH THIONGO WAWERU & ANOTHER..... PLAINTIFFS

VERSUS

KIHUMWIRI FARMERS COMPANY LTD & OTHERS .....DEFENDANTS

RULING ON INTERLOCUTORY RELIEF

1. The Plaintiffs have sought by **notice of motion dated 15<sup>th</sup> February 2013** one main relief as follows –

**“The defendants be restrained by way of injunction either by themselves, servants, agents and or employees from subdividing, selling, disposing, charging or otherwise alienating or dealing in any manner whatsoever with L.R. 9214 or any of its subdivisions including land reference numbers 9214/1, 9214/2, 9214/3, 9214/4, 9214/5, 9214/6 and 9214/7 until elections and confirmation in office of new directors of Kihiumwiri Farmers Company Ltd.”**

They have also sought interim injunction in the same terms pending hearing and disposal of the application *inter partes*.

2. When the matter was placed before me under certificate of urgency on 18<sup>th</sup> February 2013 I directed that the application be served forthwith for mention *inter partes* on 20<sup>th</sup> February 2013. Service was duly effected and the 1<sup>st</sup> Defendant was represented by counsel at the mention of 20<sup>th</sup> February 2013. The 4<sup>th</sup> and 8<sup>th</sup> Defendants appeared in person. There was no appearance for the other Defendants.

3. The 1<sup>st</sup> Defendant filed a **replying affidavit** on 20<sup>th</sup> February 2012 to which a number of documents were annexed. The issue of interim injunction was then canvassed as between the Plaintiffs and the 1<sup>st</sup> Defendant. I have considered what their learned counsels submitted. I have also perused the court record and the many documents annexed to both the supporting affidavit and the 1<sup>st</sup> Defendant’s replying affidavit.

4. Both learned counsels are in agreement that the main issue in this suit is the management of the 1<sup>st</sup> Defendant, which is a limited liability company duly incorporated under the **Companies Act, Cap 486**. This suit therefore involves a **commercial dispute** as defined in the **Circular Letter issued by the then Chief Justice A M Cocker in 1997**. The suit therefore belongs to the **Commercial Division** of the High Court and not to the Civil Division.

6. I will therefore direct that this suit be transferred to the Commercial Division.

7. But in the interests of justice I must decide first whether or not to grant interim relief upon the application at hand as sought by the Plaintiffs. It does appear from what is deponed in the supporting affidavit that the only asset of the 1<sup>st</sup> Defendant, a piece of land, has already been sub-divided and that titles for the resulting parcels are in the process of being prepared for issuance. The 1<sup>st</sup> Defendant has conceded that indeed its parcel of land has been sub-divided, but it contends that the said subdivision was done some time ago and certainly before an order entered herein on 27<sup>th</sup> October 2011 (Mwera, J), which order stated

***“that sub-division of the land and issuing of titles may not take place until other orders follow”.***

8. The 1<sup>st</sup> Defendant has not denied that titles for the resulting parcels are indeed under preparation. The line it has adopted is that the main issue in this suit was decided in a number of other proceedings which are mentioned in the replying affidavit.

9. I have perused the various orders issued in those other proceedings which are annexed to the replying affidavit. It is not readily apparent that indeed the main dispute in the present suit has been determined in those other suits. If that were so, I cannot understand why the 1<sup>st</sup> Defendant has allowed the suit to remain alive. I think the issue whether or not there is anything still remaining of the present suit to go to trial ought to be canvassed fully and properly when the application is heard.

10. For now I am persuaded that it is in the best interests of justice that the only asset of the 1<sup>st</sup> Defendant be preserved at, least pending hearing of the application *inter partes*. I will therefore grant interim injunction in terms of prayer 2 of the application.

11. The matter shall be mentioned before the Commercial Division on a date to be given now. Costs shall be in the application. It is so ordered.

**DATED AND SIGNED AT NAIROBI THIS 21<sup>ST</sup> DAY OF FEBRUARY 2013**

**H. P. G. WAWERU**

**JUDGE**

**DELIVERED AT NAIROBI THIS 22<sup>ND</sup> DAY OF FEBRUARY 2013**