



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
(MILIMANI LAW COURTS)
COMMERCIAL & ADMIRALTY DIVISION
CIVIL CASE NO.170 OF 2012

NGARA MUCOKANIRIRIA COMPANY LIMITED.....1ST PLAINTIFF
AGNES NJERI JACOB.....2ND PLAINTIFF
PETER WAMBUGU MACHARIA3RD PLAINTIFF
JAMES C.N NJOROGE.....5TH PLAINTIFF
REBECCA WANJIRU NDUNGU.....6TH PLAINTIFF
LUCY WANGUI NGURA.....7TH PLAINTIFF
CYRUS N. K. MWANIKI.....8TH PLAINTIFF
CHARLES JOHN MURAGURI.....9TH PLAINTIFF
SARAFINA WANJIRU IKAHU.....10TH PLAINTIFF
SMAUEL NJOROGE NDUNGU.....11TH PLAINTIFF
FRANCIS GACHIGUA MBUGUA..... 12TH PLAINTIFF

VERSUS

FRANCIS KINYANJUI MWANGI.....1ST DEFENDANT
FRANCIS MURIU NJOROGE.....2ND DEFENDANT
JAMES NDERITU NJOROGE3RD DEFENDANT
JAMES NDERITU NJUGUNA.....4TH DEFENDANT
LUCY NJERI NGANGA.....5TH DEFENDANT

ALEXANDER MEEME KAJOI6TH DEFENDANT

PERPETUAL MUTHONI KARIUKI..... 7TH DEFENDANT

REGISTRAR OF COMPANIES.....8TH DEFENDANT

RULING

1. Article 159(2) (d) of the Constitution directs courts to administer justice without undue regard to procedural technicalities and also to protect and promote the purpose and principles of the Constitution. One of those principles are fair hearing and expeditious determination of disputes between parties.
2. Sections 1A and 1B of the Civil Procedure Act introduced the oxygen rule by way of an overriding objective for expeditious and proportionate determination of disputes. My brother Hon. Odunga J in the case of **Eunice Wairimu Muturi –vs- Washington Muchiri Muturi (2012) e KLR** had this to say of Section 1A and 1B aforesaid:-

“The Court of Appeal in dealing with the overriding objective in the case of Stephen Boro Gitiha –vs- Family Finance Building Society & 2 others Civil Application No. Nai 263 of 2009, held inter alia that the overriding objective overshadows all technicalities, precedents, rules and actions which are in conflict with it and whatever is in conflict with it must give way. If the other talked of backlog of cases is littered with similar matters, the challenge to the Courts is to use the new “broom” of overriding objective to bring cases to finality by declining to hear unnecessary interlocutory applications and instead to adjudicate on the principal issues in a full hearing if possible.” (Emphasis mine)

3. This suit was commenced by way of a Complaint dated 12th March, 2012. It sought several declarations against an annual general meeting held on 1/12/2011 purported to be of the 1st Plaintiff, Ngara Mucokaniriria Company Ltd. It also sought to bar from office those elected in that meeting among other prayers. Together with the Complaint, a motion on notice was taken out seeking a restraining order against the 1st to 7th Defendant from assuming office pending the conclusion of the suit. Before that motion could be heard, on 9th May, 2012, the Defendants made an application to strike out the name of the 1st Plaintiff (hereinafter “the company”) from the suit and also to strike out the suit for being an abuse of the court process. The latter application was argued by way of written submissions.
4. I have carefully considered the applications on record and the Affidavits. Behind the suit, is a property measuring 60 acres owned by the company in the outskirts of Nairobi. The dispute dates back to 1976 when some people collected funds from the public to purchase a farm. That farm is the 60 Acres which was later to be owned by the company for allocation to the members. Some members have been allocated plots on that farm whilst others have not. Much has been going on to the detriment of the members or those who contributed the funds that sourced the said farm. All this seems to have been contributed to by ineffective running of the company (the 1st Plaintiff). To my mind therefore, the dispute really is who are the bona fide officials of the company who will steer the company away from controversy and deliver plots to the membership.
5. That being the case, I am of the firm view that, no amount of objections or applications or authorities of whatever nature will deliver justice to the person really affected by the goings on in the company. That is the Company’s shareholders/members. Whilst some arguments put forward in both applications may look so germane, powerful, attractive and compelling, I am afraid they do not promote the purpose and principles of the Constitution I alluded to above. Neither do they promote the overriding objective of the Civil Procedure Act. They all go contrary to the same. The suit has not moved an inch ever since it was filed in March, 2012. Even the 1st to 7th Defendants have not filed their defence.

In this regard, my opinion is that expedited justice can only be achieved by having the witnesses on the dock as soon as possible they be cross examined and the truth be known to all and thereupon the

company start operating for the benefit of the membership.

6. Accordingly, under Article 159 (2) (d), Sections 1A , 1B and 3A of the Civil Procedure Act, I am minded to strike out as I hereby do all the pending applications in this matter, to wit the motions dated 12th March and 18th April, 2012, respectively. I will also direct that this suit be heard within 90 days of today as follows:-

1. *The 1st to 7th Defendant do file and serve their Defence within three (3) days of today.*
2. *The Plaintiffs do file and serve their bundle of documents, list of and witness statements within 14 days.*
3. *The Defendants do file and serve their bundle of documents, list of and witness statements within 14 days.*
4. *The parties do file within 30 days of today an agreed statement of issues.*
5. *This matter be mentioned on 12th April, 2012 to give directions as to the hearing dates.*
6. *So as to ensure that the parties strictly comply with the timelines set and in order to avoid prevarication of whatever kind, I direct that any of the parties who fail to strictly adhere to and/or comply with these directions shall have their respective pleading, be it the **Plaint** or the **Defence**, struck out under Order 11 Rule 2(O) (ii) of the Civil Procedure Rule without any necessity of making an application for such orders.*
7. *Orders accordingly.*

DATED and **DELIVERED** at Nairobi this 8th day of March, 2013.

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A. MABEYA

JUDGE