



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CIVIL CASE NO. 561 OF 1996**

**JOSEPH MUREITHI KINYUA & OTHERS.....PLAINTIFFS**

**VERSUS**

**KAGUMO MUNYAKA & CO. LTD.....DEFENDANT**

**RULING**

The application dated 26/1/2010 is brought by the defendant, Kagumo Munyaka & Co. Ltd pursuant to **Section 3A** of the **Civil Procedure Act**. The applicant seeks the following orders:-

- “1. That this court do order that each of the 560 shareholders of the defendant/applicant is entitled to two (2) acres each;**
- 2. That the defendant do proceed to carry out survey and distribution of the land to its members;**
- 3. that the District Officer, Subukia Division do provide security as and when necessary;**
- 4. That the plaintiffs do bear costs of the application.”**

The grounds upon which the application is premised are that the plaintiffs filed an application dated 14/4/2003 seeking to put into effect the judgment of this court, rendered on 9/5/2001. A consent order was recorded on 10/7/2009 when it was agreed that a committee should share out the defendant’s farms. The membership of the committee was as per the list exhibited as “KM AA”. Kaburi Marugu, a director of the defendant swore the affidavit in support of the Notice of Motion. According to Kaburi, the committee met on 18/9/09 and resolved that each of the 560 should get 2 acres. He exhibited the resolution (MK BB (1), (II) & (iii) the agreement in Kikuyu and translated into English by James Kibuthia Karanja (KKA). It is the deponent’s contention that the shareholders are desirous that the farm be distributed so that they can develop their plots for their use.

In opposing the application, Joseph Migwi filed a replying affidavit dated 19/4/2010 and a further affidavit dated 6/12/2010. He avers that he is one of the plaintiffs in the suit and that on 18/9/09, Phael Kaburi, Joseph Mbuthia, Francis Ngari, Stanley Kangangi, Godfrey Muriithi, Geoffrey Gatarwa, Jane Njeri, Joseph Migwi and Peter Minuthia attended the meeting as directed by the court. That the parties did not agree on the way forward and it was adjourned prematurely, indefinitely; that they realized that the agenda for the meeting of 19/9/09 was not in accordance with the court order. He exhibited a copy of the notice (JM1). He deponed that they have never agreed that each shareholder gets 2 acres and that they are willing to share the land in accordance with the decree with each shareholder getting land equivalent to each member’s shareholding. It was also contended that Ex. KM AA has been altered and is strange to

them and that the advocate has the original copy annexed as (JM1). He also denied that there was a meeting on 18/9/09 and is a stranger to MK BB (1) a translation of minutes of a meeting held on 18/9/2009, (II) minutes in Kikuyu & (III) list of members. It was also Migwi's contention that the defendant is trying to sneak into the company more members into the Company after the case has been resolved; that the defendant's committee members have no land in the company as the 1<sup>st</sup> defendant sold his shares, Joseph is occupying his brother's land, Francis Ngari is occupying his mother's land, Godfrey Mureithi is occupying his father's land and Stanley Kangangi is occupying his mother's land. It is his view that the defendant's representatives are trying to frustrate the process.

After a careful consideration of the affidavits and submissions by both parties, I think it necessary to set out the decree of the court. The court in its judgment held as follows:-

**“1. That a declaration do and is hereby issued that Kagumo Munyaka company Ltd has 560 and not 436 members;**

**2. That an order do and is hereby issued directing the defendant to convene a shareholder's meeting to elect a management committee within 45 days of the date hereof to oversee the survey, allocations and settlement of the said 560 members of the defendant's three farms namely L.R. 6741, 6742 and 6743 according to the members shareholding.”**

In compliance with the court's order, the warring parties came up with a committee which signed a consent on 14/7/2009. The committee's mandate was to effect the court's order.

Both parties contend that they agreed to meet on 18/9/09 and they indeed met. Even though the applicants claim that they resolved on how to distribute the land, the respondents deny that such a resolution was arrived at in that meeting. The respondent dispute the minutes of the meeting of 18/9/09. The agenda of the meeting should have been in accordance with the court's decree. However, the minutes show that part of the agenda was the presentation of 98 new members. The court had already determined that the company comprises 560 members. The issue of membership could not arise at that stage. The minutes also show that each member was to get 2 acres. The court's order was to the effect that the committee was to oversee the allocation, survey and settlement of the members on the farms **“according to their members shareholding”**. That meant that it was the committee to determine from their records, what each member was entitled to and thus allocate and settle them accordingly. It is not correct for the applicant's counsel to argue that to determine each member's acreage according to the shares will be opening up the case. By admitting that determining each member's acreage would mean reopening the case, does confirm the respondent's objection, that the committee did not determine what each member was entitled to based on the shareholding.

The respondents have also contended that the minutes which are translated to English are altered and doctored (KK BB(I) & (II)). I have looked at the consent and they seem quite alike save that one seems to be a copy of the other.

The respondent also exhibited as JM I, the notice of the Annual General Meeting which was to be held on 19/9/09. It is true that the agenda did not reflect the decree of the court at all. The agenda was:-

**“1. Chairman to make introduction and brief the members;**

**2. Elections of the Directors in accordance with articles to be presided over by the registrar;**

**3. AOB.”**

There is no mention of the contents of the decree of the court whose main substance was survey, allocation and settlement of the defendants' members in accordance with their shareholding. In my view, to grant the applicants prayers would be departing from the decree of the court. This court has not been moved to review the decree as an appellate court. For that reason, I decline to grant the orders as prayed. Let the parties comply with the judgment of the court and the consent recorded by the parties

which became an order of the court. In the end this application is dismissed with costs to the plaintiffs/respondents. This being a 1996 matter that was filed 15 years ago, the committee should try and resolve it as quickly as possible. The time allowed was 45 days since 10/9/2001. Litigation must come to an end and the parties should endeavour to do that within the next 45 days. It is so ordered.

**DATED and DELIVERED this 16<sup>th</sup> day of March, 2012.**

**R.V.P. WENDOH**  
**JUDGE**

**PRESENT:**

Ms Samba holding brief for Mr. Wandaka for the plaintiffs.

Mr. Machage for the respondent.  
Kennedy – Court Clerk.