



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**MILIMANI COMMERCIAL AND ADMIRALTY DIVISION**  
**CIVIL SUIT NO. 529 OF 2011**

**JOHN PETER KAMAU RUHANGI.....1<sup>ST</sup> PLAINTIFF**  
**JOSEPH K. GAKURE.....2<sup>ND</sup> PLAINTIFF**  
**M. J. METHU.....3<sup>RD</sup> PLAINTIFF**  
**JOSEPH K. MUTHAMBURE.....4<sup>TH</sup> PLAINTIFF**  
**JOSEPH K. KIRIGWI.....5<sup>TH</sup> PLAINTIFF**  
**LAZARUS W. WAIRAGU & OTHERS.....6<sup>TH</sup> PLAINTIFF**

**VS**

**KENDA INVESTMENTS LIMITED.....1<sup>ST</sup> DEFENDANT**  
**WANJAU KIRIMA.....2<sup>ND</sup> DEFENDANT**  
**GODFREY KIBUTHU.....3<sup>RD</sup> DEFENDANT**

**RULING**

1. The plaintiffs have applied to this court for temporary injunction orders to issue against the defendants restraining the 2<sup>nd</sup> and 3<sup>rd</sup> defendants from hosting and/or convening an Annual General Meeting of the 1<sup>st</sup> defendant company until the hearing and determination of a suit filed contemporaneously with the application. The application also seeks an order that the Annual General Meeting of the 1<sup>st</sup> defendant company be held under the supervision of the Office of the Registrar General or a representative thereof with due notice to all shareholders and on a date fixed by this court.
2. The application is based on grounds set out on the face of the application and is supported by an affidavit sworn by John Peter Kamau Ruhangi, the 1<sup>st</sup> plaintiff on 23<sup>rd</sup> November 2011 and a supplementary affidavit sworn by the same deponent on 10<sup>th</sup> January 2012.
3. In opposition to the application, there is a replying affidavit sworn by the 3<sup>rd</sup> defendant Godfrey Kibuthu on 2<sup>nd</sup> December 2011 and a replying affidavit and a further affidavit sworn by the 2<sup>nd</sup> defendant Wanjau Kirima on 13<sup>th</sup> December 2011 and 20<sup>th</sup> January 2012 respectively.

4. The contention by the plaintiffs is that they are members of the 1<sup>st</sup> defendant companies, being shareholders in the company. The 2<sup>nd</sup> and 3<sup>rd</sup> defendants have been running the affairs of the 1<sup>st</sup> defendant company without involving the plaintiffs and other shareholders, contrary to the memorandum and Articles of Association of the company. The plaintiffs allege that the 2<sup>nd</sup> and 3<sup>rd</sup> defendants have been holding meetings of the company with selected members leaving the plaintiffs out. They further aver that the 2<sup>nd</sup> and 3<sup>rd</sup> defendants have not been filing annual returns of the company and have not been providing proper accounts of the company. Due to the fraudulent manner in which the 2<sup>nd</sup> and 3<sup>rd</sup> defendants have been running the company, the fate of the company's real and other assets, including a property known as Kenda House, Nairobi and L.R. No. 202/11092, City Park Nairobi, cannot be ascertained. The fraudulent management of the 1<sup>st</sup> defendant by the 2<sup>nd</sup> and 3<sup>rd</sup> defendants is therefore bound to occasion loss and damage to the plaintiffs unless the orders sought are granted.

5. In response, the 3<sup>rd</sup> defendant in his affidavit states that he and the 2<sup>nd</sup> defendant are the surviving directors of the 1<sup>st</sup> defendant company since the death of Hon. Gerishon Kirima who was the chairman of the company. The deponent refutes that any of the plaintiffs have previously raised any issue with regard to convening of, attendances and deliberations at Annual General Meetings. He confirms that the directors of the company have been filing Annual returns to the Registrar of Companies through the company auditors and exhibits copies of the said returns. He further states that all members of the company are issued with notices of Annual General Meetings but contends that due to the vast membership of the company, personal service of the notices is impracticable. The plaintiffs' claim that they were not aware of the Annual General Meeting scheduled for 26<sup>th</sup> November 2011 which was stopped by this court is also denied with the 3<sup>rd</sup> defendant contending that as an indication that the plaintiffs were well aware of the meeting, the 2<sup>nd</sup> plaintiff applied to be considered for the position of director, pursuant to such notice. The deponent further contends that none of the asset of the company are in danger of waste and that the same are managed to the satisfaction of members. The plaintiffs' present application does not therefore merit grant of the injunction orders sought.

6. The affidavits sworn by the 2<sup>nd</sup> defendant substantially mirror the averments set out above and I need not reproduce the same.

7. I have considered the application and the affidavit evidence placed before me in support of and in opposition of the application before the court.

8. The issues I need to determine are, firstly, whether the present application merits confirmation of the interim injunction orders obtained by the plaintiffs on 24<sup>th</sup> November 2011 and, secondly, whether 1<sup>st</sup> defendant's Annual General Meeting should be supervised by the Registrar of Companies.

9. With regard to the first issue, I have taken the liberty to peruse the plaint filed on 23<sup>rd</sup> November 2011 by the plaintiffs contemporaneously with the application before the court and the prayers sought in the plaint are as follows:

**(a) An injunction restraining the defendants jointly and severally from holding the Annual general Meeting on 26<sup>th</sup> November 2011 or at any other time in future without notifying all the shareholders of the 1<sup>st</sup> defendant.**

**(b) An order that the registrar of Companies do appoint a representative from his office to supervise the 1<sup>st</sup> defendants' Annual General Meeting and ensure that the meeting is conducted in accordance with the law.**

**(c) An order that the Defendants do account to the plaintiffs and other shareholders on the income and expenditure of the 1<sup>st</sup> defendant since incorporation.**

**(d) Costs of the suit.**

**(e) Any other relief that this Honourable Court may deem fit so to grant.**

10. In my considered view, I find the prayers sought in the plaint to be substantially subsumed in the application presently before the court. The plaintiffs' contention is that the 2<sup>nd</sup> and 3<sup>rd</sup> defendants have not been conducting the affairs of the company in accordance with the constitution of the company and in accordance with the law. They claim that Annual General Meetings are conducted without notice or with notice to a selected number of the membership of the company. They also complain that annual returns of the company are not filed with the Registrar of Companies. They are apprehensive that the company is fraudulently managed hence putting the assets of the company at risk. They also take issue with the defendants for failure to render accounts of the company. Lastly, they seek an order of the court that the next Annual General Meeting of the company be conducted under the supervision of the Registrar of Companies or a representative of that office. All these matters are of the nature that this court can deal with in the context of the present application and do not require that the suit be subjected to full trial. I see no issues as would require evidential contest exceeding the evidence already placed before the court. This is because all the issues relate to legal obligations of a company to its members as expressly provided for in the Companies Act and in the Memorandum and Articles of the Company. The defendants have no discretion but to fulfill these legal obligations. They would have no answer to the same at a full hearing as that would not in any material way shift the burden to meet these obligations.

11. In that regard, I find it superfluous to venture into confirming whether or not a case for grant of injunction orders is merited pursuant to the present application as granting such an order would essentially only serve to maintain the status quo pending the holding of the company's next Annual General Meeting, which status quo obtains anyway.

12. My take therefore is that it is not necessary to grant an injunction order restraining the holding of the Annual General Meeting when at the same time the court is being asked to direct that such meeting be supervised by the Registrar of Companies. I would rather make orders that will ensure that a proper Annual General Meeting of the company is arranged and conducted and through which all the grievances of the plaintiffs would be addressed.

13. For these reasons, I am inclined to make the following orders:

- 1) That an Annual General Meeting of the 1<sup>st</sup> defendant company be convened within 60 days from today.**
- 2) That Notice of the Meeting be issued in writing and served upon each member in accordance with Article 53 of the Company's Articles of Association to be received by each member at least 21 days from the date of the meeting. Such notice to specify the matters stipulated in the said article.**
- 3) To supplement the written notice above, I direct that notice of the meeting be advertised in at least two daily newspapers of national circulation in Kenya and in at least two radio stations, having reach within the geographical locations of the majority of the membership.**
- 4) The Registrar of Companies or a representative do supervise the Annual General Meeting to ensure that the meeting and its agenda accord with the law and the constitution of the company.**
- 5) The Officer Commanding Station in the location of the venue of the meeting be served with this order at least 7 days from the date of the meeting to depute personnel to ensure order at the meeting.**
- 6) This matter be mentioned within 7 days from the date of the Annual General Meeting for feedback and further directions of the court.**

**IT IS SO ORDERED.**

DATED, SIGNED AND DELIVERED ON THIS 19<sup>TH</sup> APRIL 2012.

**J. M. MUTAVA**

**JUDGE**