



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT**  
**AT NAIROBI**  
**MILIMANI LAW COURTS**

**Civil Suit 556 of 2011**

**HOMEWAY POULTRY FARM LTD.....PLAINTIFF**

**VERSUS**

**JOHN MUTUNGA MWANGI.....1<sup>ST</sup> DEFENDANT**

**PASCALINA NYOKABI.....2<sup>ND</sup> DEFENDANT**

**CHARLES MUHORO NGARE.....3<sup>RD</sup> DEFENDANT**

**ELIJAH SEKAH.....4<sup>TH</sup> DEFENDANT**

**MOSES OLOO WINGA.....5<sup>TH</sup> DEFENDANT**

**JAMES GICHURU.....6<sup>TH</sup> DEFENDANT**

**ESTHER WAMBUI.....7<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. By a Plaint filed on 9<sup>th</sup> December 2011, the Plaintiff sought a permanent prohibitory injunction restraining the Defendants and each of them from undertaking or dealing in any way with the plaintiff’s property and from holding themselves out as directors of the Plaintiff or conducting meetings of the Plaintiff or interfering with the management of the Plaintiff. The Plaintiff also sought a declaration that the list of directors indicated in the company’s register as at 2<sup>nd</sup> November 2011 be deemed as the legitimate list of directors of the company and that any purported removal be declared null and void.
2. Contemporaneous with the Plaint, the Plaintiff filed an application for interlocutory injunction orders restraining the Defendants from undertaking or dealing in any way with the plaintiff company and from holding themselves out as directors of the company. The application was heard *inter partes* on 17<sup>th</sup> January 2012 and a ruling delivered on 23<sup>rd</sup> February 2012 in which this court granted the said injunction orders pending hearing and determination of the suit.

3. Summons to enter appearance were served upon the Defendants on 6<sup>th</sup> March 2012 but the Defendants failed to enter appearance. The Plaintiff then filed a Request for Judgment in default of appearance which request was allowed by the court and interlocutory judgment entered on 20<sup>th</sup> April 2012. The matter was then fixed for formal proof on 16<sup>th</sup> May 2012.

4. The Plaintiff called two witnesses during the formal proof.

5. Plaintiff Witness No. 1 was Mr. Wilson Rading the Assistant Registrar of Companies and a State Counsel in the Registrar of Companies' Department. In his evidence, Mr. Rading stated that he was in Possession Company of the file of Homeway Poultry Farm Limited and had on 2<sup>nd</sup> November, 2011, issued a list of directors in a letter dated the same day. 2<sup>nd</sup> November, 2011. From the letter, he confirmed that the Company was registered on 27<sup>th</sup> June, 1973. The last returns made for the company was in the year 2009. According to the return, the details of directors remained the same as those indicated in his letter of 2<sup>nd</sup> November, 2011. He dismissed a rival list of directors contained in a letter dated 16<sup>th</sup> May, 2011 purportedly issued from his office stating that the names in that list did not tally with the list of directors in the company file.

6. Plaintiff witness No, 2 was Ms. Wanjiru Muthia. Ms. Muthia testified that she was a founder director of the Plaintiff company and its chairperson. She was among the subscribers to the company at the time of its registration as a company in the year 1973. She told the court that the original members of the company were seven but that some members had since died. The members currently registered as directors were Esther Wambui, James Gichuru, Kariuki Therenja, Stephen Mbote, Joseph Mungati, Gladys Kabiru and herself. She testified that sometime in the year 2011, some people including the defendants invaded the Plaintiff's farm L.R. No. 10389 Nairobi and purported to take over the company and its land. These were instigated by the then company secretary of the Plaintiff a Mr. Gichuru who purported to sell some plots of members to the non-members. The matter was reported to the chief and to the police. After she reported Mr. Gichuru to the chief, he stole the register of members and hid it. She called a meeting where of the company to discuss his conduct after which he was removed as company secretary. After his removal, he started a campaign to remove other directors from their positions in the company. He did not succeed as he was suspended as a secretary and the persons he was mobilizing could not believe him. The chief ordered him to return the register. She testified that the defendants John Mutunga Mwangi, James Gichuru, Esther Wambui, Pascalia Nyokabi, Muhoro Ngare, Elijah Sekah, and Oloo Wingawere not members of the company. Esther Wambui was a director but left the board without notifying other director. The said defendants had never been elected as officials of the company. She had been chairlady of the company from 1973 upto now and no meeting had ever been held to elect them. The said persons were farm intruders and thieves seeking to grab plots of weak members and those who died. She urged the court to order that they be removed from the farm. She confirmed further that the company was in the process of finalizing surveying of the land after which titles to members would be issued.

7. I have carefully considered the pleadings, the affidavit evidence on record and the oral evidence of the Plaintiff's witnesses. I have also considered the written submissions by counsel for the Plaintiff.

8. On the strength of the evidence placed before me, and in the light of the Plaintiff's case in this matter being wholly undefended, I am satisfied that on a balance of probability, the Plaintiff has proved its case as against the Defendants.

9. I am therefore inclined to enter judgment in favour of the Plaintiff as prayed in the Plaint. I further award costs of this suit to the Plaintiff.

10. These shall be the orders of the court.

**DATED, SIGNED AND DELIVERED IN NAIROBI THIS 14<sup>TH</sup> DAY OF JUNE 2012.**

**J.M. MUTAVA**  
**JUDGE**