



**REPUBLIC OF KENYA**

**High Court at Nairobi (Nairobi Law Courts)**

**Civil Suit 836 of 2010**

**JOSEPH MUCHUI MUIRURI.....PLAINTIFF/APPLICANT**

**VERSUS**

**PETER KARIUKI MACHARIA.....1<sup>ST</sup> DEFENDANT/RESPONDENT**

**KIHUUMWIRI FARMERS COMPANY LIMITED....2<sup>ND</sup> DEFENDANT/RESPONDENT**

**RULING**

The application before the court is brought by a Notice of Motion dated 14<sup>th</sup> December, 2010 and taken out under **Order 40, Rules 2 & 4, of the Civil Procedure Rules 2010; Section 135 of the Companies Act, Cap 486 Laws of Kenya**. The Applicant thereby seeks from the court orders that-

- 1. A temporary interlocutory injunction do issue restraining the Respondents, their Agents' servants and/or proxies from holding the Annual General Meeting on 15<sup>th</sup> December 2010 or any subsequent date till the determination of this suit for further orders of the court.**
- 2. The Honourable Court do order for a shareholders meeting of the 2<sup>nd</sup> Defendant to be called, held and conducted in such manner as the court deems fit.**
- 3. The Officer Commanding Station Division (sic) (OCPD) Thika police be ordered to enforce, oversee and / or ensure obedience or compliance with orders of the court.**

The application is supported by the annexed affidavit of Mr. Joseph Muchui Muiruri, sworn on 14<sup>th</sup> December, 2010 and is based on the grounds that-

- 1. The Defendant / Respondent has on a paid up advertisement put on the daily nation advertised for annual general meeting to be held on 15<sup>th</sup> December 2010.**
- 2. On 13<sup>th</sup> February 2010 the Defendants purported to hold another annual general meeting.**
- 3. The dissatisfied shareholders of the 2<sup>nd</sup> Respondent had requisitioned for a general meeting which was held on 19<sup>th</sup> December 2009 wherein the 1<sup>st</sup> Defendant was voted out as a director of the 2<sup>nd</sup> Defendant.**
- 4. That the Registrar had called for a meeting of the 2<sup>nd</sup> Defendant for 14<sup>th</sup> December 2010 which meeting was opposed by the Respondents so as to maintain the status quo.**

5. **The 2<sup>nd</sup> Defendant has been embroiled in leadership wrangles wherein the successive directors have been in office illegally and have committed all acts of waste and mismanagement in exclusion of the shareholders.**
6. **The Defendants/Respondents had been issued with a notice by the Registrar to hold the Annual General Meeting after some members complained to the Registrar and which it has failed to comply with.**
7. **Any shareholder opposed to the management of the 2<sup>nd</sup> Defendant is harassed, intimidated and even arrested on fabricated charges.**
8. **The ills of the 2<sup>nd</sup> Defendant can only be sorted out by its shareholders through an all inclusive shareholders' meeting.**
9. **The meeting of the Defendant on 15<sup>th</sup> December, 2010 cannot be fair and just as the same as the same as partisan.**
10. **The 1<sup>st</sup> Defendant cannot convene any meeting of the 2<sup>nd</sup> Defendant and any such meeting would be illegal in view of member's resolution.**

I have noticed that the application is not opposed as there is neither a replying affidavit filed nor grounds of opposition. I have also noticed that there is no evidence of the Respondents being served as there is no affidavit of service on record. I am of the humble view that in the absence of such service this matter cannot proceed ex-parte. Therefore, in the interests of justice and fairness, I order that the matter be stood over generally with leave to the applicant to take appropriate steps to advance it.

It is so ordered.

**L. NJAGI**  
**JUDGE**

**DATED and DELIVERED at NAIROBI this 21<sup>st</sup> day of November, 2012**

**MUTAVA**  
**JUDGE**