



IN THE HIGH COURT OF KENYA

AT NAKURU

CIVIL CASE NO. 18 OF 2011

AKUISI FARMERS COMPANY LIMITED.....APPLICANT

VERSUS

WALLACE MWAURA.....1ST RESPONDENT
GODFREY KUNG’U.....2ND RESPONDENT
JOSEPH GICHUHI.....3RD RESPONDENT
RAHAB MWAURA.....4TH RESPONDENT
MARGARET WARIGIA.....5TH RESPONDENT
PETER MBUGUA.....6TH RESPONDENT
JOEL WAINAINA.....7TH RESPONDENT

RULING

Akuisi Farmers Company Limited engages in purchasing of large tracts of land subdivides them into smaller parcels which are given to its members and shareholders. The defendants are members/shareholders of the plaintiff. The Plaintiff purchased **L.R. 9949 Grant No. I.R. 16014 Nakuru District** which measured about 1526 acres. The land was named as **Chui Farm** as evidenced by the title (**JKM3**). The defendants reside on the said land while other directors reside on the other farms owned by the Plaintiff. In 2005, the Plaintiff’s members who total about 800 requested the plaintiff’s Directors then in office to designate the local representatives of Chui Farm to facilitate the subdivision of Chui Farm and issuance of title deeds. The request was acceded to and the defendants were designated as the local representatives at Chui Farm. However, since the defendants were charged with that responsibility, they have never provided a work plan, records of their activities. Towards the end of 2010, the Plaintiff started receiving complaints from the inhabitants that the defendants were levying arbitrary and exorbitant charges and even after that, did not issue title deeds to the owners. Some of the complaints and receipts were exhibited **JKM4 (a)1-11**. The demand was addressed to each of the defendants on 11/1/2011 to stop their activities and give a full account to the Plaintiff (**JKM5**). Whereas the 2nd to 7th Defendants did not respond to the demand, the 1st Defendant replied insisting that he would continue with the activities without accounting to the Plaintiff (**JKM6**). For fear that the Plaintiff’s members are likely to suffer damage and loss and because of the defiance, the plaintiff’s directors decided to file this suit and sought interim orders by the Notice of Motion filed simultaneously with the Plaint on 22/2/2011. The same is supported by the affidavit of the current chairman of the Plaintiff, **John Kagai Mwangi**, dated 18/2/2011. The Plaintiff seeks an order of injunction to restrain the defendants or anybody acting through or under them from collecting money from the plaintiff’s members and shareholders and from processing or continuing to process the subdivision of the Plaintiff’s land **L.R.9949 Grant I.R. 16014 Nakuru District**, or obtaining and issuing title deeds pending the hearing of this suit. **Mr. Okeke**, the Plaintiff’s counsel also filed submissions on 14/3/2011. Mr. Okeke submitted that the affairs of the Plaintiff are managed by a Board of Directors in accordance with **Article 80 Table A of the Companies Act**. He

urged that the management of the Company is through the Board of Directors of the whole Company's membership or general meeting and since the Defendants are not Directors they can only be managers as delegated by the Board. Counsel submitted that the Defendants claim to have been mandated by members of Chui Farm to carry out their duties but that could only be made at an Annual General Meeting under **Sections 131 to 133 of the Companies Act** but there is no evidence of such mandate. As to the argument that the land no longer exists, it was argued that the Plaintiff bought land and it surrendered it to the Government for purposes of subdivision and that since titles are being processed, the titles must be in existence. Counsel urged the court to allow the application.

Mr. Ngure, counsel for the Defendants/Respondents filed grounds of opposition dated 24/2/2011 and a replying affidavit was sworn by **Wallace Mwaura** dated 11/3/2011, and submissions were filed in court on 15/3/2011. The grounds of opposition are to the effect that the plaintiff does not have *locus standi* in this matter, the application is unmerited, it is fatally defective, does not disclose a reasonable cause of action, is an abuse of the court process and that the applicant did not come to court with clean hands. Wallace Mwaura deponed that despite the fact that members had paid for processing of title deeds since the land was purchased in 1976, none had been processed and in 2005, the members of Chui Farm decided to take their own initiative to get titles for their members. The land was surrendered to the Government and when titles are processed by the Defendants, are issued to individual members directly by the Commissioner of Lands as part of **KIESEGES/SUBUKIA WEST BLOCK 4-1-780**. The defendants exhibited the letter of conversion issued by the Ministry of Lands dated 26/8/2009. It is the defendants' contention that the land described by the Plaintiff does not exist and so far 350 titles have been processed. The 1st Defendant also deponed that their mandate came from members of Chui Farm and not the Plaintiff. After the demand was issued by the Plaintiff, they called a meeting of Chui Farm Members who resolved that the Committee continues with the process. He annexed a letter dated 26/2/2011 (**WM5**) and Minutes of that meeting (**WM6**). He annexed letters from members who claim to be satisfied with the ongoing process (**WM7**).

For an order of injunction to issue, the applicant has to demonstrate that;

- (1) **the Applicant has a prima facie case with high probability of success;**
- (2) **If an order of injunction is not issued, the Applicant will suffer irreparable loss;**
- (3) **If the court is in doubt, then it should decide on a balance of probability.**

Having heard the rival arguments, it is not in dispute that the Plaintiff is a Public Limited Liability Company incorporated under Cap. 486 the Laws of Kenya; the defendants are members and shareholders of the company; the plaintiff is a land buying company which later subdivides the land amongst its members/shareholders; that sometime in 2005, with the approval of the Board of Directors, the defendants were designated as the local representatives of the plaintiff's shareholders on **Land Reference No. 9949 Grant I.R. 16014** to help process the title deeds for shareholders who are settled on the suit property; the plaintiff has a Board of Directors in place. It also does not seem to be in dispute that the defendants have carried out the exercise of processing title deeds and settling members on the land to the exclusion of the Board of Directors. The defendants have as much as admitted that.

The land in question, Chui Farm, belonged to the Company which it held on behalf of its members/shareholders. It has been urged by the Respondents that the land in question no longer exists upon the surrender of the original title to the Government; that all rights, title and interest of the land were surrendered to the Government. A copy of the surrender was exhibited "**WM1**". As a result of the surrender, the Commissioner of Lands subdivided and that the titles are directly issued by the chief Land Registrar – from the parcel designated as **KIESEGES/SUBUKIA WEST BLOCK 4-1-780 (WM2)**.

The Respondents have disputed that they have not got their mandate from the Board but from members of Chui Farm. Chui Farm is not a legal entity. Chui Farm belonged to the company. If complainants were to arise that some of the members of Chui Farm have not been allocated land or title, the party concerned and answerable would be the plaintiff. The members of Chui Farm paid their monies to the plaintiff

which purchased the land. In the event of any issues, the company is squarely responsible. I do agree with the applicants that whatever body the defendants are, they exercise these powers as delegated to them by the Board of Directors of the Company or the General Meeting. They are not independent of the Board and cannot enjoy parallel powers as the Board. It is irrespective of the fact that the members of Chui Farm have met and allowed them to continue with the work. I have seen the minutes annexed to the Replying affidavit. Chui Farm is not a registered company independent of the Plaintiff. That meeting could only be held under **Section 131 and 132 of the Companies Act**.

It has been argued by the Respondents that about 350 titles have already been issued to individual members. There are other titles yet to be issued. As observed earlier, in the event that any member ends up not getting his share, or title, the blame will land on the plaintiff's table and it would be the Plaintiff to avail land to such a member. The defendants are answerable to the Board of Directors or to the company's General meeting.

There are alleged complainants of failure to issue title. It is viable that only 3 people have been said to complain out of the many members. The company Registrar of members which the Respondents are using has not been disclosed. It cannot be established whether the allocation of the land tallies with the members entitlement or shares as per the register. The plaintiff has a right to ask for accountability by the Respondent. In my view, the plaintiff has made a prima facie case with high chances of success. The plaintiff has to come for the interests of its members who may suffer irreparably if an order of injunction is not granted. I hereby grant prayer 3 of the chamber summons dated 18th February, 2011.

Costs to abide the suit.

DATED and DELIVERED this 10th day of June, 2011.

R. P. V. WENDOH
JUDGE

PRESENT:

Mr. Okeke for Plaintiff/Appellant

Mr. Ngure for Defendants/Respondents

Kennedy – Court Clerk