



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NYERI

CIVIL CASE NO. 62 OF 2004

**NDATHI MUGUNDA COMPANY
LIMITED.....PLAINTIFF**

VERSUS

**PATRICK MATU GITHINJI.....1ST
DEFENDANT/RESPONDENT**

**MICHAEL NDUNGU NDEGWA.....2ND
DEFENDANT/RESPONDENT**

**JOSEPH GAKONYO WANYIRI.....3RD
DEFENDANT/RESPONDENT**

**MICHAEL NDUNGU KAGECHA.....4TH
DEFENDANT/RESPONDENT**

**JOHN KIRUGI MWANIKI.....5TH
DEFENDANT/RESPONDENT**

RULING

The subject matter of this ruling is the Notice of Motion dated 5th July 2011 in which **Ndathi Mugunda Co. Ltd.**, the Plaintiff/applicant herein, seeks for the following orders:

- 1. That this application be certified as urgent and the same be heard on a priority basis.**
- 2. That the Honourable Court be pleased to declare that the meeting held on 5th February 2011 resulting in the naming of the 5th Defendant (John Kirugi Mwaniki) as well as Wilson Nderitu Ngiri, Florence Watetu Joseph, Charles Kihembe Ndirangu and Charles Njure Murage as officials of the Plaintiff company as being in contempt of the court orders issued vide the ruling dated 16th October**

2008 and therefore invalid, null and void and an abuse of the Court process.

3. That the Honourable Court be pleased to declare that by convening and participating in the said meeting, the 5th Defendant (John Kirugi Mwaniki) as well as Wilson Nderitu Ngiri, Florence Watetu Joseph, Charles Kihembe Ndirangu and Charles Njire Murage and contemnors in respect of the Court order issued vide the ruling of this Honourable Court delivered on 16th October 2008.

4. That the Honourable Court be pleased to order the person of Mr. John Kirugi Mwaniki Wilson Ndiritu Ngiri, Florence Watetu Joseph, Charles Kihembe Ndirangu, Charles Njire Murage as well as the 1st – 4th Defendants, using post office Box Number 777-10100, Nyeri, to appear before court and show cause why they should not be committed to civil jail, or their property sequestered for being in contempt of Court.

5. That in the alternative to prayer No. 3 above, and in order to purge the contempt complained of, that Mr. John Kirugi Mwaniki, Wilson Ndiritu Ngiri, Florence Watetu Joseph, Charles Kihembe Ndirangu, Charles Njire Murage as well as the 1st – 4th Defendants do forthwith cause a withdrawal of the minutes dated 5th February 2011 from the companies Registry and apply that the Registrar of Companies does make appropriate orders/record in regard to the effect of the court orders sought above.

6. That the costs of this application be in the cause.

The Motion is supported by the affidavit of Charles Kinyua Karoki sworn on 5th July 2011. **Patrick Matu Githinji, Michael Ndungu Ndegwa, Joseph Gakonyo Wanyiri, Michael Ndungu Kagecha and John Kirugi Mwaniki** being the 1st, 2nd, 3rd, 4th and 5th Defendants, filed the replying affidavit of John Kirugi Mwaniki, sworn on 13th July 2011 to oppose the Motion.

I have considered the material placed before me and the rival submissions made by learned counsels from both sides. The Plaintiff avers that on 16th October 2008, it obtained a temporary order of injunction to restrain the Defendants by themselves, their agents and or anyone claiming under them from holding any meeting purporting to be in the name of the Plaintiff company pending the hearing and determination of this suit. It is alleged that on 5th February 2011 the Defendants together with Wilson Nderitu Ngiri, Florence Watetu Joseph, Charles Kihembe Ndirangu and Charles Njire Murage, purported to hold a meeting in direct and flagrant disregard of the court order contemptuously whittling down this court's dignity and in abuse of the court process. On the basis of the above averments the Applicant urged this court to grant orders. The Defendants on their part beseeched this court to dismiss the Motion on the basis that the orders sought affect strangers who are not parties to this suit. The Defendants further argued that the Motion seeks to introduce a new cause of action camouflaged as contempt of court against the defendant and four strangers. The Defendants further averred that they are not responsible for the acts done by the strangers like holding meetings. The deponent annexed to his replying affidavit a copy of the letter from the Registrar of Companies dated 13th April 2011. he claimed that he came to learn that the Plaintiffs were summoned by the Registrar to determine the existence of two parallel minutes relating to a meeting held on 5th February 2011.

After a critical consideration of the grounds set out on the face of the Motion and the facts deponed on the affidavits filed for and against the Motion. There is no dispute that a meeting purported to be the meeting of the Plaintiff Company was held on 5th February 2011. The Defendants have disputed having organized the meeting. In fact they claim that the orders sought should not be given because it will affect parties not parties to this suit. It is also not in doubt that some people not parties to this suit have been mentioned as contemnors. A close interpretation of the orders issued on 16th October 2008 will reveal that the Defendants restrained by themselves their agents and or anyone claiming under them from holding any meeting purporting to be in the name of the Plaintiff company pending the hearing and the determination

of this suit. The Defendants have denied having called for the meeting nor attending the meeting of 5th February 2011. What is not in dispute is that the meeting was held in contravention of the orders of 16th October 2008. the question is whether or not the people who called for the meeting were aware of the existence of those orders and or whether or not they were agents for the Defendants. The Minutes indicate that John Kirugi Mwaniki, the 5th Defendant herein, was elected as the vice secretary of the Plaintiff company. It is curious to note that the 5th Defendant has not specifically denied having attended the meeting. In my view, the 5th Defendant tactfully avoided to be noted to have participated in the meeting because he knew of the existence of the court orders. He wanted not to be cited for contempt. If he was not aware of the meeting he could have expressed his displeasure or surprise of being elected the vice secretary in absentia. After a careful consideration of the matter, I think the order which should be granted in the circumstances of this case is prayer 2 of the Motion. The other prayers were not proved to the required standards.

In the end I issue an order declaring the meeting held on 5th February 2011 plus the resolutions passed therein to be in contravention of this court's orders issued on 16th October 2008 hence null and void. In short, whatever resolutions passed in the aforesaid meeting are of no effect hence the registrar of companies is directed not to act on them. Cost of the application to abide the outcome of the suit.

Dated and delivered at Nyeri this 19th day of July 2011.

J. K. SERGON

JUDGE

In open court in the presence of the parties and counsels i.e. Mugambi & Ombongi.

COURT: This matter is fixed for hearing 15th November 2011.

J. K. SERGON

JUDGE