



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
COMMERCIAL & TAX DIVISION

CIVIL SUIT NO. 740 OF 2010

JOHN ONYANGO OJANJI.....PLAINTIFF

VERSUS

CHRISPINUS WAFULA MUGWANG'A.....1ST DEFENDANT
VINCENT KIZITUS OJIAMBO.....2ND DEFENDANT

RULING

This Ruling is delivered in the Chamber Summons dated 30th October 2010, in which the Applicant seeks an interlocutory injunction (pending the hearing and determination of this suit) restraining the Respondents from managing, transacting, dealing or in any other way representing the company known as TRI-SOURCE ENGINEERING LIMITED without the full authority of the Applicant or operating the company's bank account No. 1114472050 at Kenya Commercial Bank or in any way receiving, paying, appropriating or allocating any monies belonging to the company.

The application is founded mainly on the ground that the Respondents have breached the provisions of the **Companies Act (Cap 486 of the Laws of Kenya)** and are irregularly acting as the exclusive and sole directors of the company to the detriment of the Applicant. Also that the Respondents have engaged in acts of fraud to the detriment of the Applicant who is the majority shareholder. The application is supported by the Applicant's affidavit sworn on 30th October 2010.

The Applicant has deponed that the two Respondents conspired to remove him from the directorship of the company, wherein he was a majority shareholder with 300 shares against the Respondents 200 and 100 shares each. He says also that they falsified and forged documents to represent to the Registrar of Companies that he had voluntarily resigned from directorship and sold his shares to them. Copies of documents evidencing his complaints lodged with the Criminal Investigations Department of the Kenya Police, the Anti-Banking Fraud Unit of the Central Bank of Kenya and the Registrar of Companies are

annexed to the Supporting Affidavit, alongside the Company documents indicative of his shareholding and the disputed resignation.

The application is opposed on the strength of the 1st respondents affidavit sworn on 30th November 2010 on behalf of both respondent's and filed on the same date. It challenges the filing of the suit and applications against the directors personally and solely without enjoining the company and exhibits documentation to prove that the Applicant voluntarily resigned from the company, only to later change his mind and start filing complaints against the Respondents, irregularly causing changes in the directorship so as to remove the Respondents and add strangers as new directors, a move which was thwarted by the Registrar of Companies on 11th February 2010.

The 1st Respondent has also deponed to the criminal activities of the Applicant and has exhibited documents evidencing his fraudulent activities with a client of the company and with the Companies Bank Account in respect of which he faces Criminal charges under Criminal Case No. 135 of 2010, still not pending. The circumstances surrounding the Applicant's voluntary resignation are clearly explained by the deponent to the Replying Affidavit and are related to the dubious activities the Applicant was involved in immediately prior to the resignation, which he seems to have continued to perpetrate, even thereafter, as per the depositions made in the Replying Affidavit as supported by the documentation provided.

Oral submissions were made in the application whereby learned counsel for the Applicant stated that the Applicant has established a prima facie case against the Respondents and risks incurring irreparable loss that damages cannot compensate. Also that the balance of convenience tilts in his favour, given that he has challenged his removal from directorship on the basis that he was mysteriously removed.

On his part learned counsel for the Respondents submitted that the Company ought to have been joined since the orders sought would affect it if granted. He submitted further that, given the depositions in the Replying Affidavit and documentation annexed thereto, the court should find that the suit and application are intended to frustrate the company's operations and were filed out of malice, which the court should not allow, arguing that the Applicant has not approached the seat of equity with clean hands.

I have considered the application, the documentation filed and the submissions by counsel. In the absence of a either Supplementary Affidavit or Further Affidavit being filed in answer to the Replying Affidavit, I take the final portion in the matter to be as presented by the Respondents and as supported by the documentation filed by themselves in answer to the application herein.

The Applicant is facing criminal charges, which he acknowledges. He does not appear to have provided the registrar of companies with the necessary information requested in the letter attached to his annexure "JOO3" to allow for his complaint, that he was illegally removed from directorship to be addressed. Until and unless his right to directorship and shareholding is confirmed by the registrar, the court cannot assist him in the manner sought. He has not established a prima facie case and has failed to demonstrate any irreparable loss. Even if the above two requirements were doubtful, I would find that the balance of convenience does not favour his application.

For the above reasons the Chamber Summon dated 30th October 2010 is hereby dismissed with costs to the Respondents. The interim orders granted by the Hon Mr. Justice Apondi on 17th November 2010, and thereafter extended from time to time are hereby vacated.

Orders accordingly.

DATED, SIGNED and DELIVERED at NAIROBI this 1ST day of SEPTEMBER, 2011

M. G. MUGO

JUDGE

In the presence of:

No Appearance	For the Applicant
Mr. Omogo holding brief for Mr. Namada	For the Respondent