



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (MILIMANI COMMERCIAL COURTS)**

**Miscellaneous Application 790 of 2009**

**IN THE MATTER OF ERERI COMPANY LTD**

**AND**

**IN THE MATTER OF THE COMPANIES ACT**

<b>JAMES KARIUKI MUCHIRI .....</b>	<b>1<sup>ST</sup> APPLICANT</b>
<b>SAMUEL KUNG'U KANYOKO .....</b>	<b>2<sup>ND</sup> APPLICANT</b>
<b>ALOISE NJOROGE .....</b>	<b>3<sup>RD</sup> APPLICANT</b>
<b>DAVID MUCHIRI .....</b>	<b>4<sup>TH</sup> APPLICANT</b>
<b>MBURU MUCHINA .....</b>	<b>5<sup>TH</sup> APPLICANT</b>
<b>JOSEPH NJEHU BORO .....</b>	<b>6<sup>TH</sup> APPLICANT</b>
<b>NJOROGE NGURIMU .....</b>	<b>7<sup>TH</sup> APPLICANT</b>
<b>SAMUEL MUKIRI NGOTHO .....</b>	<b>8<sup>TH</sup> APPLICANT</b>
<b>ISAAC RIBIRO KAMERE .....</b>	<b>9<sup>TH</sup> APPLICANT</b>
<b>NJUGUNA M. KUNG'U .....</b>	<b>10<sup>TH</sup> APPLICANT</b>
<b>DANSON WANGO GITAU .....</b>	<b>11<sup>TH</sup> APPLICANT</b>
<b>MBURU NYAGA KIBE .....</b>	<b>12<sup>TH</sup> APPLICANT</b>
<b>KARIGI MWANGI .....</b>	<b>13<sup>TH</sup> APPLICANT</b>
<b>MBURU KAGO .....</b>	<b>14<sup>TH</sup></b>
<b>APPLICANT</b>	

**VERSUS**

<b>SIMON KAMAU GITAU .....</b>	<b>1<sup>ST</sup> RESPONDENT</b>
<b>FRANCIS KARIUKI MARANGA .....</b>	<b>2<sup>ND</sup> RESPONDENT</b>
<b>STEPHEN KAMAU KUNG'U .....</b>	<b>3<sup>RD</sup> RESPONDENT</b>
<b>NELPHAT GICHUHI KINYANJUI .....</b>	<b>4<sup>TH</sup> RESPONDENT</b>
<b>STEPHEN NDUNGU NJENGA .....</b>	<b>5<sup>TH</sup> RESPONDENT</b>
<b>GEOFFREY MUIRURI MUCHAI .....</b>	<b>6<sup>TH</sup> RESPONDENT</b>

**RULING**

1. This matter was instituted by way of a chamber summons by dint of the provisions of section 135 and rules 3 and 9 of the Companies High Court Rules. Under those provisions, the court may

either on its own motion or on the application made by a director of the company or a member of a company who would be entitled to vote at the meeting, order for a meeting of the company to be held and conducted in such manner as the court will think fit.

2. The applicants application dated 15<sup>th</sup> September 2009, wrongly in my respectful view, sought for orders restraining the company from holding a meeting on 18<sup>th</sup> September 2009 at Longonot and from convening or holding or conducting any other meeting of the said company pending the determination of when the court may direct the registrar of companies to call for a meeting of the company at Githunguri town Kiambu District. This application is supported by the grounds stated on the body thereto. These grounds are expounded by the matters deposed to in the supporting affidavit of **James Kariuki Muchiri** sworn on 15<sup>th</sup> September 2009 and 9<sup>th</sup> October 2009.
3. According to the applicants, the last meeting of the company was held on 31<sup>st</sup> October 1998, pursuant to a court order in **HCCC MISC. APP.NO. 213 OF 1998**. Since then more than  $\frac{3}{4}$  of the directors are now over 70 years of age and they are therefore illegible to hold office according to the companies Articles of Association. The directors of the company are also accused of calling a meeting which was scheduled for 18<sup>th</sup> September 2009, at Longonot which is insecure according to a report by the registrar of companies who acknowledged that there was insecurity in a previous meeting. Moreover most of the shareholders come from Githunguri and it is convenient to hold a meeting at Githunguri. The applicants contended that the notice calling the meeting was not properly issued and served upon the members. Moreover the notice calling the meeting was not accompanied by the auditors report.
4. This application was opposed by the respondents. They relied on the replying affidavit by **Francis Kariuki Miranga** sworn on 30<sup>th</sup> September 2009 and a further affidavit sworn on 22<sup>nd</sup> October 2009. The respondents complained that their efforts to call an Annual General Meeting were thwarted by court orders obtained by the applicants restraining them from holding the meeting. The respondents contend that they are legally in the office since they were elected in a meeting held in 1998. They are required to retire at the General Meeting.
5. There are several allegations made against the applicants including attempts to hold illegal meetings of the company in Githunguri. There are also allegations of collusion between the

applicant and the office of the Registrar General so that the applicants are facilitated to take over the running of the company. The respondents would like the company to have an Annual General Meeting to be held at Longonot which is the headquarters of the company. They deny that there is insecurity at Longonot as the place is surrounded by Mai Mahiu police station; Longonot police post and the presence of Game Rangers from the Kenya Wild Life Services are within the vicinity of the company farm. Longonot is convenient for the shareholders and it will also be easy to vet the genuine shareholders.

6. It is generally not in dispute that a meeting of the company should be called since no meeting has been held since 1998. The only issue is the venue of the meeting. I find the prayers by the applicants that sought to restrain the company from holding the meeting of the 18<sup>th</sup> September 2009 were not warranted and perhaps not sought in good faith. Firstly, an application under rules 3 and 9 of the Companies High Court Rules can not be used to seek injunctive or restraining orders. Orders of injunction can only be granted in a matter that is filed by way of a plaint, an originating summons or a petition.
7. A suit instituted by chamber summons under the aforementioned rules is only limited to the court giving orders regarding the convening of a companies meeting. I find that the applicants stole a march on the respondents when they obtained an *ex parte* order of injunction to stop the meeting of 18<sup>th</sup> September 2009 in this application.
8. May that as it may, under the provisions of section 135 of the Companies Act, the court can convene a meeting of the company. This company is embroiled in serious disputes with a section of the shareholders. Going by the allegations and counter allegations made by the applicants and the respondents against each other, it is evident that a dispute over how the company is managed, the list of share holders, the accounts and assets of the company are very contentious issues.
9. There is also serious acrimony between the two groups which runs deep. The applicants want the meeting to be held in Githunguri town Kiambu District while the respondents insist that the meeting should be held at Longonot within the company premises. The reasons of insecurity are advanced by the applicants for opposing the meeting which was scheduled for the 18<sup>th</sup> September 2009 and was to be held at Longonot. I find these reasons not credible because the court can direct

the Officer commanding Mai Mahiu police station to provide security during the meeting.

Moreover Longonot place is within the company's premises and share holders will feel free to attend a meeting within their company premises. On the other hand the applicants have not shown the premises where the meeting will hold at Githunguri and who will bear the costs of the venue.

10. Accordingly I hereby direct that there be a meeting of Eleri Company Limited on 12<sup>th</sup> of March 2010 to be held at Eleri Company Limited Longonot Farm from 11.00 a.m. The Registrar of Companies is directed to attend the meeting to verify the genuine share holders who will take part in the meeting and to supervise the elections of the directors. The respondents are ordered to prepare an agenda and the notice of the meeting to be issued to the members by way of advertisement in either the Daily Nation or the Standard within seven (7) days of this ruling. The officer Commanding Mai Mahiu Police station, the District Officer and the Chief of the Area are ordered to provide security and to ensure orderliness during the meeting.
12. This matter shall be mentioned on 19<sup>th</sup> March 2010 to ensure compliance. For reasons that the applicants stopped the meeting of 18<sup>th</sup> September 2009 without any justifiable reasons, each party shall bear their own costs of this litigation. It is so ordered.

RULING READ AND SIGNED ON 12<sup>TH</sup> FEBRUARY 2010 AT NAIROBI

**M.K. KOOME**  
**JUDGE**