



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT EMBU  
Civil Case 71 of 2009**

**GIKUMBO FARMERS MULTIPURPOSE CO. LTD.....1<sup>ST</sup> PLAINTIFF**  
**FAITH WAMBUI NOORIA.....2<sup>ND</sup> PLAINTIFF**  
**HARRISON MAGUH.....3<sup>RD</sup> PLAINTIFF**  
**SHADRACK NJOGU MUGO.....4<sup>TH</sup> PLAINTIFF**  
**PETER MBOGO NJAGI.....5<sup>TH</sup> PLAINTIFF**  
**BETHA KATHAIA KINYUA.....6<sup>TH</sup> PLAINTIFF**  
**FRANCIS MBOGO WAMUNGE.....7<sup>TH</sup> PLAINTIFF**

**VERSUS**

**STEPHEN NJERU GATUMU...  
.....1<sup>ST</sup> DEFENDANT**  
**CYRUS NDOGO NYAGA.....2<sup>ND</sup> DEFENDANT**  
**MUCHIRI KIAMBATI.....3<sup>RD</sup> DEFENDANT**

**R U L I N G**

The application dated 29/10/2009 has only one prayer as hereunder;

***“ That the Honourable court be pleased to order for the removal of a caution caused to be registered on 19/6/2009 by the 2<sup>nd</sup> defendant herein against the 7<sup>th</sup> plaintiff’s Title No. Ngariama/Rungeto/1352.”***

It is premised on 14 grounds on its face and on the 21 paragraph supporting affidavit of one Harrison Magu who is listed as the 3<sup>rd</sup> plaintiff in the main suit. An issue was raised about the said Harrison Magu not being competent to swear the affidavit on behalf of the 1<sup>st</sup> plaintiff. I note further that although counsel for the respondent claimed that the said deponent is not a director of the 1<sup>st</sup> plaintiffs he has not availed to this court the list of the current director from the Registrar of companies. That would have been the only document to disprove the deponent’s directorship in the plaintiff company. In the absence of the list of the directors as at the time the application was filed, I do not have any sufficient basis or grounds to make a finding to the effect that the deponent is not a director of the 1<sup>st</sup> plaintiff who is duly authorized to swear an affidavit on its behalf.

The supporting affidavit is therefore in my well considered view properly on record. I shall now proceed from there.

The main suit was filed in the High Court sitting in Nyeri on 10/4/2007. The case arose out of a

disagreement or faking out of the directors of the 1<sup>st</sup> plaintiff. One group wanted the other to be enjoined from interfering in the running of the company. They also wanted to stop a special general meeting which had been requisitioned by one of the factions. On the same date the plaint was filed, the plaintiffs filed a chamber summons under certificate of urgency seeking the same restraining orders while pending the hearing and final determination of the main suit.

The parties nonetheless reached a consent and filed the consent order dated 20/7/2007 whose meaning and ambit was to the effect that;

***“ Status quo in respect of Gikumbo Farmers Multi-purpose Company Limited by maintained pending the hearing and determination of the suit herein.”***

The consent order is nonetheless not clear on what the said **“status quo”** envisaged. Did it mean that the then current office bearers would remain in office? Did it stop the directors from conducting the business of the company and if so to what extent? Did it bar the company directors from making any financial commitments on behalf of the company? Did it bar the company directors from accessing bank loans?

The applicants in the present application interpret the consent order to mean that the respondent would not interfere with the running of the company in whatever way.

The Respondents on the other hand have interpreted it to mean that only the intended Special General meeting of the directors was stopped but everything else was business as usual.

The plaintiffs in the course of running the company affairs entered into negotiations with Family Bank with the intention of taking a loan using the company's parcel of land as collateral. On learning this, the 2<sup>nd</sup> Defendant/Respondent filed a caution in respect of the said Title thus stalling the transaction.

This is what has brought the applicants to court. It wants the caution removed to enable it to take the loan in order to meet the urgent operations of the company. According to the applicant, the lodging the caution, the Respondent went against the consent order mentioned earlier on. According to the applicant, the 2<sup>nd</sup> Defendant/Respondent only wants to paralyse the operations of the company. He avers that the Respondent is not a licensee as claimed and has no legal right in the property in question, or in the plaintiff company where he has ceased taking his coffee for processing. He contends that if the caution is not removed, then the company and the coffee farmers are bound to incur irreparable losses as it will not be able to process the farmers' coffee.

According to the Respondent however, if the caution is lifted and the loan advanced he and others will not have any control over the same and the plaintiff's might embezzle the money.

I have keenly considered this application along with the submissions by both counsel herein.

On the issue of the consent order which I have discussed above, I note that although the same was quite precise, the 1<sup>st</sup> order granted or allowed the application dated 10/4/2007. Prayer No.4 of that application which was allowed read in part;

***“ The defendants by themselves ..... be restrained by a temporary injunction .... from interfering with the operations and/or affairs of the plaintiffs company and from operating the company’s banks accounts until the hearing and determination of this application and until the hearing and final disposal of this suit.”***

The Respondent herein is the 2<sup>nd</sup> defendant and was therefore one of those enjoined from ***“interfering with the operations and/or affairs of the plaintiff company”***. In my considered view, stopping the process of accessing the loan which was meant to facilitate the affairs or operations of the company is interference with the operations of the company. The 2<sup>nd</sup> defendant was enjoined by the court from such interference vide the consent order on 20/7/2007. The Respondent has not refuted the said order. Nor has it been set aside or otherwise discharged by the court. The defendant's/Respondents are therefore still bound by the same jointly and/or severally. By registering the caution to frustrate the issuance of the Bank loan, the Respondent did interfere with the running of the operations of the company. This runs contrary to the consent order which is still in force. The Respondent is estopped from committing acts that are in contravention of that consent order.

Even assuming that there was no such court order, I would still find in favour of the plaintiff/applicant because the law and also equity is on his side. There is no law requiring that all shareholders endorse a decision of a board of directors. Decisions of the company and the day to day running is left to the Board of Directors. All that they need to do is meet and make a resolution on the way forward. they do not have to consult all the shareholders for consent on the day to day affairs of the company as intimated by the respondent in paragraph 7 of his replying affidavit. The applicant annexed the resolution of the board authorizing the borrowing to his affidavit. If the Respondent was unhappy with the manner in which the money would be used, or if the plaintiffs thereafter embezzled the money, then he can always ask the directors to account. Paralyzing the entire operations of the company which caters for many other members is not just selfish but fails to gain favour in the eyes of equity. The caution lodged by the respondent against the 1<sup>st</sup> plaintiffs parcel of land is unjustifiable and unsustainable. The same should be removed to enable the plaintiff company run its affairs for the greater good of its members. This will not prejudice the applicant in any way whatsoever.

In the circumstances, I allow the application dated 29/10/2009 and grant the orders as prayed with costs to the 1<sup>st</sup> Plaintiff/Applicant.

Delivered, signed and dated at Embu this 26th day of April 2010

**W. KARANJA**

**JUDGE**

**In presence of: Mr. Kahiga and Mr Kamotho for Mr. Mahinda.**