



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
MILIMANI COMMERCIAL & TAX DIVISION
MISC. APPLICATION NO. 396 OF 2010

EUNICE WANJIRU

NYORO.....1ST PLAINTIFF

MAURINE WANJIRU

GITANGU.....2ND PLAINTIFF

VERSUS

MBO-I-KAMITI FARMERS

CO.LTD.....DEFENDANTS

RULING

The application before the court is made by way of a Chamber Summons dated 5th May, 2010 and expressed to be brought under Rules 3 and 9 (1) of the Companies (High Court) Rules; Section 135 of the Companies Act; Section 3A of the Civil Procedure Act and all enabling provisions of law. The applicants essentially seek an order that the court do grant them leave to call an extraordinary General Meeting of Mbo-i-Kamiti Farmers Co. Ltd within 30 on days a date and time to be given by the court to be held at Mbo-i-Kamiti Farmers Co. Ltd Anmer Estate, Kiambu for purposes of election of Directors. They also seek leave to appoint Charles N Njenga, Advocate and certified Public Secretary to attend the meeting to verify the genuine share holders who will take part in the meeting and to supervise the election of the Directors. They further seek an order that the Registrar of Companies be directed to attend and oversee the meeting.

The Application is based on the annexed Affidavit of Eunice Wanjiru Nyoro, the 1st Applicant herein, and is based on the grounds that –

- a) Mboi-i-Kmaiti Farmers Co Ltd of which the applicants are members has no legitimate Board of Directors and cannot therefore operate.**
- b) The Companies assets are also going to waste and court cases to which the Company is party cannot proceed and some of its property has been advertised for sale by financial institutions.**
- c) Unless this application is urgently heard to facilitate the proper election of its Directors, the company is faced with imminent collapse**

The application is opposed by way of a Replying Affidavit sworn by one Thuo Mathenge, the Chairman and a Director of the Defendant Company. In the said affidavit, Mr Mathenge avers that the Defendant is not facing any imminent collapse and has an existing competent Board of Directors. A list of the names of the Directors is annexed to his Affidavit. He further swore that the company recently held an Annual

General Meeting on 15th March, 2010, which meeting is confirmed by a letter dated 23rd October, 2010 from the office of the Registrar of Companies. He therefore took the view that the application before the court was incompetent and should not be allowed.

I have considered the pleadings and the written submissions filed by the respective parties. I note from copies of the share certificates attached to the Application that the Applicants' share certificates were issued in December, 1984. Those certificates are evidence of membership of the Company. If it is true, as the 1st Applicant states in her Supporting Affidavit, that since the applicant became members they have never been served with notices of the meetings of the Company, then this would suggest that the Company has never held a meeting for the last 25 years! However, this statement is contradicted by the averments of Mr Mathenge, the Chairman and a Director of the Defendant Company, as well as by correspondence from the office of the Registrar of Companies.

In Paragraph 4 of his Replying Affidavit, Mr Mathenge attests that as recently as 1st April, 2010, the Registrar of Companies wrote a letter confirming that the Company held its Annual General Meeting on 15th March, 2010. This information is indeed confirmed by a letter dated 1st April, 2010, in which the Registrar states that the Directors of the Company held the Annual General Meeting on 15th March, 2010. According to another letter dated 23rd March, 2010 and addressed to Mbo-i-Kamiti Farmers Co. Ltd by the Registrar of Companies, the Registrar states that according to the Companies records as at 23rd March, 2010 the Directors of the Company held the Annual General Meeting on 15th March, 2010. I therefore find it fallacious and misleading for the Applicants' to allege that the Company has never held a meeting for the last 25 years.

Since the Company held its Annual General Meeting as recently as in March this year, there is no legal basis for the court to sanction another meeting at this stage unless and until the meeting held on 15th March is proved to have been irregularly held, and the officials elected at that meeting to have been irregularly elected. And yet, the application before the court does not seek any such orders. In the event, the application before the court is incompetent and it is hereby dismissed with costs to the Company.
Orders accordingly.

DATED and **DELIVERED** at Nairobi this 9th day of November 2010

L. NJAGI
JUDGE