



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURT)
CIVIL CASE NO. 641 OF 2009

**IN THE MATTER OF AN APPLICATION FOR AN ORDER COMPELLING THE ISSUANCE
OF SHARE CERTIFICATE UNDER**
SECTION 82 OF THE COMPANIES ACT

AND

**IN THE MATTER OF AN APPLICATION FOR AN ORDER COMPELLING THE
CONVENING OF AN ANNUAL GENERAL MEETING UNDER**
SECTION 135 OF THE COMPANIES ACT

RULING

1. By an originating/Notice of Motion brought under sections 82, 83, 85 and 135 of the companies act, the applicant seeks for the following orders:-

1. The register of Kibera Development Company Ltd (“the company”) be rectified so as to include that applicant herein as a shareholder and member;
2. This Honourable Court be pleased, upon grant of prayer (a) above to direct/order an annual general meeting of the company be convened by the Court strictly in accordance with the companies Act and the Company’s Articles for the purpose of transacting all the statutory business there under specified.
3. This Honourable Court may be pleased to order the company to issue share certificates/warrants to the Applicant forthwith in respect of the shares paid for by him and standing to his credit;

2. This application is based on the grounds that the company was incorporated on 26th August, 1998 the applicant was one of the promoters, however a share holders register has never been opened or updated to reflect the shares of the applicant. The applicant’s share holding needs to be identified and the company should be ordered to hold an Annual General Meeting. The applicant also relied on the supporting affidavit sworn by **Clement Muturi Kigano** sworn on 23rd July, 2009. He attached several receipts purportedly issued to him for the purchase of the shares. He also annexed a letter dated 9th October, 2001 in which the Chairman, Treasurer and the Secretary of the company were calling upon members to pay Ksh. 140,000/= to complete the purchasing of a house at Kahawa. The applicant also

wrote a letter dated 12th October, 2001 seeking a clarification in regard to his share contributions. He also annexed the memorandum and articles of association which show the subscribers of the company.

3. This application was opposed by Joseph Karanja Mbugwa through the replying affidavit sworn on 22nd January, 2010, and a supplementary affidavit sworn on 8th March, 2010. According to the respondents, the applicant has never been allotted shares by the company thus the court cannot take the responsibility of allocating shares of a private company. The subscribers of the company indicated that the applicant is not one of them. Similarly, the receipts produced by the applicant are vague they are issued by **Kibera Development Self Help Group** which was resolved. Upon the resolution of the self help group, the members were required to raise a certain amount of money as capital and only those who raised became members of the company.

4. The applicant was aware that he needed to raise the minimum capital and due to his failure, he did not become a member of the company thus it was argued the applicant cannot seek for a rectification of the register or for the convening of the Annual General Meeting, when he is not a member. Finally, the orders sought are mandatory in nature and if orders are granted, they would be final. This is despite the fact that the issues raised by the respondents in rebuttal can only be determined through oral evidence.

5. I have carefully considered the issues raised for and against this application. The orders sought are mandatory in nature as they would confer final rights to the applicant if issued. It is trite law that mandatory orders can only be issued in very clear and plain cases. It is instructive in this case the applicant is seeking for the rectification of the share holder's register of the company. He is also seeking for the Annual General Meeting of the company be convened and also orders that he be paid dividends. The documents relied on by the applicants are receipts which were not issued by the company, in fact all the receipts do not show to whom the payment was made.

6. According to the company, that is a matter that will require oral evidence for the applicant to prove whom he paid the money. Secondly, the letter dated 9th October, 2001 is not addressed to the applicant it is a general notice and finally the memorandum and articles of association do not show the applicant as one of the subscribers. In other words there is no clear and plain evidence to support the applicant's claim for the orders sought. The applicant's application fails and it is dismissed with costs to the respondent.

Ruling signed and submitted for delivery on 1st November, 2010

MARTHA KOOME

JUDGE

Delivered and countersigned on 10th day of **December**, 2010.

MURUGI MUGO

JUDGE